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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: March 29, at 9:00 a.m.
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Food Cost Containment Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule implements the mandates of Public Law 101–147, Child Nutrition and WIC Reauthorization Act of 1989, enacted November 10, 1989, relative to food cost containment in the Special Supplemental Food Program for Women, Infants and Children (WIC). In order to achieve further savings in the cost of WIC Program foods, principally the cost of infant formula, this rule implements two major legislative provisions. First, it restates and extends into future years the provisions of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100–460) which mandated that in order to receive its grant allocation, a State agency must examine the feasibility of cost containment systems by August 30, 1989 and implement such cost containment systems where feasible. Second, the rule requires all WIC State agencies using a retail food delivery system, except certain Indian State agencies, to employ one of two infant formula procurement methods. The first method is a competitive sealed-bid, single-supplier contract for price concessions on the cost of formula purchased by program participants through retail outlets. Under the second method, the comparative method, the State agency compares the cost savings of any alternative form of infant formula cost containment it may wish to implement with cost savings attainable through the competitive sealed-bid, single-supplier system. The latter system must be implemented unless the alternative system generates savings at least as great. In comparing the relative savings, this rule establishes specific factors to be considered or ignored in the comparative cost analysis of the systems under review. Unless a waiver is granted, State agencies must implement a competitive single-supplier cost containment system, or an alternative system which offers equal or greater savings. A waiver will be granted only if after performing the cost comparison, a State agency finds that it must implement the competitive single-supplier system, but is able to justify to the Food and Nutrition Service that such a system would be inconsistent with efficient or effective operation of the program, or, the difference between the savings yielded by the two systems compared is not significant. For those State agencies with contracts in effect on the date of the law's enactment, implementation must occur as current contract terms expire. Special timeline allowances are made for State agencies that have no contract in effect. Finally, implementation postponements may be requested for State agencies experiencing certain unavoidable delays that prevent a State agency from meeting the implementing time frames established in this rule.

DATES: This interim rule is effective October 1, 1989. In order to be considered, comments must be received by May 14, 1990.

ADDRESSES: Comments may be mailed to Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3746. All submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel at the above address or at (703) 756–3746.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under Executive Order 12291, and, for the reasons that follow, has been classified not major. The Department does not anticipate that this rule will have an impact on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Further, this rule will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service (FNS) has certified that this interim rule will not have a significant impact on a substantial number of small entities.

The reporting requirements contained in §§ 246.6(a)(14)(x), 246.16(m)(2)(i-iii), 246.16(n), 246.16(o)(2)(i) and 246.16(o)(3) are being reviewed by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Estimate of Burden Hours—7 CFR Part 246

Public reporting for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0584–0389), Washington, DC 20503.

This rulemaking implements the legislative mandates of section 123(a)(6) of Public Law 101–147 (enacted November 10, 1989) regarding cost containment in the WIC Program. Section 123(a)(6) amends sections 17(h)(8) and (9) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8) and (9)) to include these requirements. Section 123(f)(2) of Public Law 101–147 makes the provisions of section 123(a)(6)

effective on October 1, 1989. Section 17(h)(8)(G) of the Child Nutrition Act (as amended by section 123(a)(6)) further requires the Secretary to prescribe regulations to implement section 17(h)(8) not later than 120 days after the date of enactment (i.e. March 10, 1990). For these reasons, the Administrator of FNS has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that prior notice and comment is impracticable and contrary to the public interest and that good cause therefore exists for publishing this rule without prior public notice and comment. However, the Department has exercised some discretion in the implementation of the cost containment provisions of Public Law 101–147, and believes the rule may be improved by public comment. Therefore, comments are solicited on this rule until May 14, 1990. All comments received on or before this date will be analyzed, and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule as soon as possible.

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29115)).

Background

In response to rising food costs and the desire to use their food grants more efficiently, several WIC State agencies pioneered initiatives to lower WIC food package costs in 1987. The most significant type of cost containment measure has been infant formula rebate systems. In rebate systems, a State agency receives rebate payments from infant formula manufacturers based on the number of cans of infant formula actually purchased with WIC funds by participants at retail outlets or a percentage of total WIC infant formula purchases based on the manufacturer's overall market share in the State.

State agencies have employed a variety of methods in securing rebates on infant formula sales, and the savings achieved have been significant. Infant formula, at the retail level, is the single most expensive food item prescribed for WIC participants. As recently as 1988, expenditures for infant formula represented almost 40 percent of all WIC food costs. Collectively, States implementing rebate systems have been able to substantially reduce the cost of infant formula purchases for WIC. In Fiscal Year 1988, these savings amounted to more than $30 million. In Fiscal Year 1989, as more States entered into rebate contracts, the amount saved increased to about $250 million. These savings have permitted the WIC Program to expand services dramatically at no additional cost to the public.

Because of the tremendous success of rebate systems and the potential for services to many more eligible WIC participants, in section 645 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100–460, October 1, 1988), Congress required every State agency to explore the feasibility of cost-containment measures and to implement such a measure by August 30, 1989 if found to be viable. In addition to rebate systems, competitive bidding, home delivery, and direct distribution were mentioned as cost containment measures to be considered for the procurement of infant formula, and other WIC foods as practicable. Congress believed strongly in the need for State agencies to pursue cost-containment measures and mandated in Public Law 100–460 that noncompliance with its provisions would result in denying a State agency its grant funds for Fiscal Year 1989.

In response to Public Law 100–460, most States implemented infant formula cost-containment measures, primarily infant formula rebate systems. By September 1989, 49 State agencies had cost-containment measures in place (of which 47 were infant formula rebate systems), 7 State agencies had systems under development, and 26 intended to implement systems. At that time, only 5 State agencies, all very small, demonstrated to FNS that cost-containment measures were not feasible. Although the provisions of Public Law 100–460 expired on September 30, 1989, Public Law 101–147 revives and extends these provisions into future years.

FNS estimates that present infant formula rebate systems could save $450 million in Fiscal Year 1990 in WIC infant formula costs—the equivalent of about 800,000 additional participants. With the implementation of this rule, even further savings are expected as some State agencies enter into more cost-advantageous contracts.

Congressional and Administration Intent

Among the 19 State agencies that have elected to enter into competitive single-supplier infant formula rebate contracts, rebates range from $1.08 to $1.56 per unit of infant formula. Among the 28 States with alternative rebate contracts, rebates are much lower and range from $0.31 to $1.12 per unit.

Congress, in reviewing the experiences of State agencies using different contractual arrangements for infant formula cost containment, noted the clear differences in savings obtained through a competitive single-supplier system as opposed to alternative systems. While Public Law 100–460 moved almost all State agencies to implement some form of infant formula cost containment, Public Law 101–147 mandates that States with a retail food delivery system must choose to implement an infant formula cost containment system that provides savings at least equal to those that would be obtained under a competitive single-supplier system. By securing even greater savings than have been realized to date, State agencies may extend WIC services to thousands of additional eligible individuals who remain currently unserved. Congressman Ford of Michigan pointed out that "provisions of this legislation to mandate that States use the least costly infant formula will ensure that limited resources help as many families as possible" (*Congressional Record*), October 10, 1989, H6871).

This theme was also expressed by key members of the Senate and House in a statement accompanying the final version of Public Law 101–147, which provided that "The legislation requires State WIC agencies to institute the infant formula cost containment system that yields the most savings. The goal of the provision is to increase cost containment savings and to serve substantial numbers of additional low income pregnant women, infants, and children who are eligible for WIC but are currently left out of the program due to funding limitations" (*Congressional Record*, October 24, 1989, S14024 and October 10, 1989, H6864).

The Administration has also highly endorsed Public Law 101–147. President Bush, in his "Statement by the President" issued on November 10, 1989, upon signing Public Law 101–147, expressed what he believed was the significance of this legislation as follows: "In joining to support this improvement in WIC, the Administration and the Congress have created an opportunity to help the neediest segments of our population. We will implement competitive bidding as quickly and effectively as possible so that thousands of poor, nutritionally deficient women, infants, and children may receive the help they need."

While almost all State agencies have infant formula cost containment measures in place, the terms and conditions of the contractual

arrangements implementing these systems have largely been a matter of State agency discretion. Some State agencies have valued maximum cost savings in their system and have elected to award a contract to the manufacturer offering the lowest net unit cost (or greatest per unit rebate). In return for the price concessions offered, the manufacturer is awarded essentially exclusive rights for the State's WIC infant formula sales. Other State agencies, while also seeking to reduce formula costs, have opted for alternative contractual arrangements that do not grant market exclusivity to a single supplier. These State agencies have placed a value on such factors as participant choice in addition to food cost savings. Congress, in enacting Public Law 101–147, sends a clear message that the most important consideration is cost reduction leading to service to more participants. This emphasis is reflected in the law's mandate that State agencies implement infant formula cost containment systems that provide savings at least equal to those from a competitive single-supplier system.

Basic Provisions Cost Containment Measures for All State Agencies

Public Law 101–147 codifies in WIC's authorizing statute (section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786)) the provisions of section 645 of the Rural Development, Agriculture, and Related Agencies Appropriations Act, 1989 (Pub. L. 100–460) thereby extending its effectiveness into future years. Under Public Law 100–460, to receive its Fiscal Year 1989 grant allocation, a State agency was required to formally examine the feasibility of cost containment measures and, if feasible, implement a measure for purchasing WIC infant formula and, where practicable, other foods. In the rare instance in which a State agency demonstrated in its feasibility study that such a measure would not lower costs or would interfere with the delivery of WIC foods to participants, implementation was not required.

All State agencies (except those small agencies with studies which found cost containment measures not feasible) are now in various stages of implementing cost containment measures. Section 123(a)(6) of Public Law 101–147 amended section 17(h)(8)(A) of the Child Nutrition Act of 1966 to require all States to examine the feasibility of implementing cost containment measures with respect to procurement of infant formula and, where practicable, other supplemental foods. That section further requires State agencies to initiate action to implement such measures unless the State agency demonstrates, to the satisfaction of the Secretary, that such measures would not lower costs or would interfere with the delivery of formula or foods to participants in the program. Section 246.16(l) of this rule incorporates these requirements.

Section 123(a)(6) of Public Law 101–147 (in section 17(h)(9) of the Child Nutrition Act) defines the term "cost containment measure" as "a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in its approved plan of operation and administration." Thus, § 246.2 of this regulation adds the definition of "cost containment measure" and § 246.4(a)(14)(x) of this rule requires State agencies to describe their "cost containment measures" as part of the description of their food delivery systems in their State plans of operation and administration.

Section 123(a)(6) of Public Law 101–147 (amending section 17(h)(8)(F) of the Child Nutrition Act of 1966), prohibits State agencies from entering into any cost containment contract that prescribes conditions that would void, reduce the savings under, or otherwise limit that contract if the State solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract. Accordingly, § 246.16(q)(1) incorporates this prohibition.

Basic Provisions for State Agencies Operating Retail Food Delivery Systems

Section 123(a)(6) also requires in section 17(h)(8)(B)(i) of the Child Nutrition Act that any State that provides for the purchase of foods under the program at retail grocery stores shall, with respect to the procurement of infant formula, use a competitive bidding system or any other cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system. Such savings are to be determined by comparing the amounts of savings that would be provided over the full term of contracts offered in response to a single invitation to submit both competitive bids and bids for other cost containment systems for the sale of infant formula. While the Department strongly encourages the use of competitive bidding in the procurement of other foods, because Public Law 101–147 limits this requirement to infant formula, the provisions in the remainder of this rulemaking pertain exclusively to infant formula cost containment systems.

The Department wishes to point out that this provision of Pub. L. 101–147 may require State agencies which have already implemented or are about to implement infant formula cost containment systems in accordance with Public Law 100–460 to meet further conditions. Specifically, unlike Public Law 100–460, new section 17(h)(8)(B)(i) of the Child Nutrition Act of 1966 requires a State agency using a retail system for food delivery to procure infant formula through the competitive or single-supplier system, or a system offering at least comparable savings.

In imposing this legislative mandate, Congress carefully reviewed the experience of retail food delivery system States which had embarked on various cost containment initiatives, and incorporated in Public Law 101–147 requirements that ensure State agencies adopt systems which yield the greatest savings. Congressman Miller of California expressed congressional intent clearly: "The provisions require that all States use either competitive bidding to select a single infant formula company to provide formula for the WIC Program or use the system initially developed by the State of Florida under which a single invitation to bid is issued requesting bids under both a competitive bidding system and an alternative cost-containment system—and the system yielding the greatest savings is selected. The provisions stipulate that if the Florida model is used, the comparison of the savings yielded by the various cost containment approaches should include more than a simple comparison of initial debate offers" (*Congressional Record*, October 10, 1989, H6869).

In accordance with the requirements of section 123(a)(6) of Public Law 101–147 (amending section 17(h)(8)(B)(i) of the Child Nutrition Act) which are described above, § 246.16(m) as added by this rule requires all State agencies with retail food delivery systems to procure infant formula through one of two methods. The first, the "competitive bidding" or "competitive single-supplier" method, is one in which sealed, competitive bids are submitted by interested manufacturers, and the bid providing the lowest net retail cost or highest rebate per can is selected. The second, the "comparative method," is commonly known as the "Florida Model." As described above by Congressman Miller, this method entails a State agency simultaneously soliciting sealed bids for a competitive single-supplier system, and offers under any other alternative system the State agency wishes to consider. Under this

comparative method, the State agency must rigorously analyze the cost savings of all systems under consideration and may implement an alternative system if it yields savings equal to or greater than the competitive bidding system. In order to ensure that State agencies consistently analyze the cost data, if a State agency finds that the competitive single-supplier system does not provide the greatest savings and it wishes to implement an alternative system, it must submit its analysis to FNS for approval before it awards a contract for the alternative system.

Section 123(a)(6) of Public Law 101–147 (amending subsection (h)(8)(E)(iii) of the Child Nutrition Act) provides that Indian State agencies with 1000 or fewer participants are not required to conduct a cost comparison before implementing a cost containment system other than a competitive single-supplier system. This requirement is reflected in § 246.16(m) of this rule. Section 246.16(m) further requires that the determination of the number of participants be based on April participation levels. The report month of April has been designated as this assures the State agency adequate time to obtain the necessary participation data before the start of the new fiscal year. The rule also provides that the exemption shall apply only for the next fiscal year. Thus, if for any April the participation levels increase above 1000, the Indian State Agency will not be exempt from the cost comparison requirement for the upcoming fiscal year. It should be noted that this exemption applies only to the requirement that State agencies using a system other than a competitive single-supplier system demonstrate that it offers at least comparable savings. It does not exempt these Indian State agencies from the requirement that they implement a cost containment system in accordance with section 17(h)(8)(A) of the Child Nutrition Act § 246.16(1) of the regulations.

In order to meet the statutory mandate that a cost containment system must be implemented for infant formula procurement, § 246.16(m) requires that State agencies must implement an infant formula cost containment measure which includes each of the types and forms of infant formulas prescribed to the majority of participants, i.e., milk and soy-based iron-fortified, liquid concentrate formulas, or whatever other types and forms of formula routinely prescribed. A State agency may request bids for each type and form of formula separately (e.g., soy-based concentrate, soy-based powder), for a full product line (which results in a composite bid for all products weighted by each product's expected proportionate distribution to participants), or any other combination it wishes in order to gain the best financial advantages.

The bid specifications should advise bidders of the potential infant population for which infant contract formula will be sold. In calculating this population, the State agency should deduct the number of units of infant formula not sold due to breastfeeding. As there is no reason to expect that one system would result in a higher or lower breastfeeding rate than any other, the number of units should be the same for any type of system considered. Further, a deduction should be made for those infants receiving specialized formula for special dietary needs to arrive at the final number of infants who will potentially receive formula under the cost containment system.

Section 246.16(q) (2) and (3) of the rule contains certain specifications and limitations governing bid invitations and contract terms, as set forth below. These provisions are intended to enhance competition by maximizing the number of manufacturers submitting bids for infant formula cost containment contracts.

First, existing law (section 17(f)(16) of the Child Nutrition Act) requires that infant formula manufacturers seeking to participate in WIC meet certain registration requirements and certify their compliance with regulations issued by the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321, *et seq.* Accordingly, the rule forbids State agencies from excluding from consideration in the bid evaluation process any infant formula manufacturers qualified to participate as WIC suppliers under existing law.

Second, State agencies are forbidden from requiring infant formula manufacturers to submit bids for each system (i.e. competitive single-supplier system, multiple-supplier system, etc.) contained in the bid solicitation. Rather, the rule permits manufacturers to submit bids under any or all of the systems contained in the solicitation.

Conducting the Cost Comparison Under the Comparative Method

As discussed above, section 123(a)(6) of Public Law 101–147 (amending section 17(h)(8)(B)(i) of the Child Nutrition Act), requires that any State agency which employs the comparative procurement method for infant formula procurement must compare the amounts of savings that would be provided over the full term of contracts offered in response to a single invitation to submit both competitive bids and bids for other cost containment systems for the sale of infant formula. The comparison will determine whether the competitive single-supplier system or an alternative system yields savings equal to or greater than competitive bidding.

Accordingly, § 246.16(m)(2) as added by this rule requires State agencies following the comparative method to include the single-supplier competitive system in their solicitation of bids. The rule further provides that State agencies may prescribe their standards of choice for any alternative cost containment systems included in the solicitation of bids provided that the bid invitation established certain conditions for all cost containment systems included in the invitation. First, for each system the bid invitation must establish identical requirements for contract length. Second, each system must include the same types (e.g., milk-based), forms (e.g., liquid concentrate), and rate of utilization of the various types and forms of formula. These basic conditions are necessary to ensure that the sole basis for comparing bids is the amount of cost savings and that variations in the structure of bid options do not affect this comparison.

Section 123(a)(6) of Public Law 101–147 (amending section 17(h)(8)(B)(ii) of the Child Nutrition Act) further requires that in determining whether an alternative cost containment system yields savings comparable to competitive bidding, "the State, in accordance with regulations issued by the Secretary, may take into account other cost factors (in addition to rebate levels and procedures for adjusting rebate levels when wholesale price levels rise)." Public Law 101–147 gives examples of these "other cost factors": (1) Number of infants who are not expected to receive the contract brand of formula under a competitive bidding system; (2) infant formula for which no rebate would be provided under another rebate system; and (3) differences in administrative costs relating to the implementation of the various systems.

In accordance with the directive that the Secretary establish regulations for cost comparisons, § 246.16(m)(2) sets forth the factors which State agencies must compare in determining the amount of savings for each cost containment system. The Department believes that it is essential that the factors to be considered are examined in a consistent manner in order to ensure that contracts are compared equally and the resulting determination of the system which affords the greatest cost savings is valid. The method for

cost comparison required by § 246.16(m)(2) is described below.

The State agency must begin by establishing the gross food cost savings over the term of the proposed contract. The State agency must then take into account any variations in procedures for adjusting the amount of the savings should wholesale prices rise. Next, it must deduct from the savings for each system any administrative costs that are clearly attributable to implementation of that system. Finally, the State agency must ultimately determine which of the systems under consideration yields the greatest savings.

1. Food Cost Savings. State agencies shall determine food cost savings based on the number of units of infant formula to earn savings from manufacturers under that system and the rebate amount or net price for each unit. In estimating the number of units of contract formula, the State agency must deduct the units that will not earn savings under that system. Specifically, the State agency must exclude from the computation of savings the number of units of non-contract formula (i.e. formula brands other than the brand(s) of the manufacturer(s) under contract) which will be purchased by WIC participants.

a. *Estimating Non-Contract Formula Sales in a Competitive Single-Supplier Rebate System.* In this system physicians may prescribe a non-contract formula for WIC infants who cannot use the contract brand. Senators Leahy, Lugar, Harkin, Dole and Boschwitz placed in the record a detailed, bi-partisan analysis of the legislation which states, in part: "We expect the Secretary to examine the most current data on the percentage of infants who receive noncontract brand formula in States with competitive bidding systems and to prescribe regulations based on these data that reflect the percentage of WIC infant formula that can reasonably be expected to be noncontract brand. I would note that the proportion of infant formula that is noncontract brand in competitive bidding systems now appears to be quite low. In most competitive bidding States, less than 4 percent of the WIC infant formula is now noncontract brand" (*Congressional Record*, October 24, 1989, S14020).

Senator Leahy's estimate of 4 percent is supported by data collected by the Center on Budget and Policy Priorities in November and December 1989. Of 19 States operating competitive bid rebate systems, 18 could provide data on the use of non-specialized, non-contract brands of formula. In 12 of the 18 reporting States, the use of non-specialized, non-contract formula was at or below 3 percent. Among the 18 States that reported, the use of non-specialized, non-contract brand average was 3.5 percent, and the median was 2.45 percent.

Based on this data, the Department believes that it would be highly unusual for a State agency to have non-specialized, non-contract formula sales in excess of 4 percent of total sales.

Therefore, if a State agency expects more than 4 percent of infant formula units purchased to be non-specialized, non-contract formula under the competitive single-supplier system, § 246.16(m)(2)(i) requires it to submit to FNS for review and approval empirical data to support its estimate prior to issuing its invitation for bids. This is to assure that the State agency's invitation for bids provides bidders with an accurate estimate of the number of infants to receive contract formula which is consistent with this rule's requirements.

b. *Estimating Non-Contract Formula Sales in Alternative Systems.* In alternative systems in which two or more formula manufacturers may be awarded contracts based on their WIC formula sales in a State, not all formula manufacturers may elect to submit a bid to the State agency. Therefore, § 246.16(m)(2)(i) requires State agencies to use the aggregate market share of the manufacturers submitting bids in calculating its cost savings estimate. For example, if the manufacturers submitting bids encompass only 90 percent of the infant formula market, 10 percent of infant formula units will not earn any savings and must be excluded from the computation of food cost savings.

c. *Considering Inflation Factors.* The State agency must take into consideration in its estimate of savings, any inflation factors which would affect the amount of the savings over the life of the contract.

2. Administrative Costs. Section 123(a)(6) of Public Law 101–147, (amending section 17(h)(8)(B)(ii)(III) of the Child Nutrition Act) limits the administrative costs which may be considered in determining the cost containment system which yields the greatest savings to "differences in administrative costs relating to the implementation of the various cost containment systems (such as costs of converting a computer system for the purpose of operating a cost containment system and costs of preparing participants for conversion to a new or alternate cost containment system)". The law clearly limits deductible administrative costs to development and implementation expenses—not ongoing operational costs—incurred specifically to accommodate a change in the cost containment system. Section 246.16(m)(2)(iii) as added by this rule requires State agencies to deduct from the gross food cost savings any administrative costs associated with developing and implementing each particular cost containment system under consideration.

For purposes of the cost comparison calculation, special treatment of administrative cost deductions is required for procurements that would result in contractual periods of less than 24 months. In such instances, allowable administrative cost deductions must be proportionately distributed over, at a minimum, a 24 month period if a two year amortization period is chosen. The balance of such administrative costs would be similarly deducted on a proportionate basis for cost comparisons done for a successive contract or contracts. For example, 25 percent of allowable administrative costs would be subtracted from food cost savings in a six month contract, 50 percent in a one year contract, 75 percent in an 18 month contract, etc. Thus where a State agency is analyzing cost savings under a 6 month contract, and would incur $100,000 of allowable administrative expenses in order to implement a competitive bidding system, using the minimum amortization period of 2 years, it would deduct $25,000 from the estimated food cost savings under the 6-month contract. If at the end of this contract the State agency conducted a comparative bid covering the next 12 months, it would deduct $50,000 in allowable administrative expenses in determining its cost savings under the competitive bid option. If, at the end of this contract, the agency conducted another comparative bid for a 12-month contract, it would deduct the remaining $25,000 of unamortized administrative expenses in analyzing the competitive bidding option.

This requirement is imposed because administrative costs may possibly exceed differences in food cost savings between two different cost containment systems over a relatively brief period of time. However, these administrative costs are likely to be non-recurring costs. Therefore, the longer the contractual period, the less likely it is that one-time administrative expenses would overshadow real and substantial food cost savings between two or more alternative cost containment systems. Given clear Congressional intent to maximize food cost savings, the Department does not believe that Congress intended that consideration of

administrative costs be used to subvert its overall objective of expanding WIC participation through more efficient use of available food funds. The Department selected a minimum of two year amortization period for administrative costs because the use of a shorter amortization period would exaggerate the impact of these costs upon the cost comparison. Thus § 246.16(m)(2)(ii) requires that, for contracts of two years or less, administrative costs shall be proportionately distributed over at least a two year period.

Deductible administrative costs are restricted to two broad categories:

a. *Food Delivery Costs.* Costs to modify automated data processing (ADP) systems or other components of a State agency's food delivery system, such as designing and printing new food instruments are deductible. However, administrative costs of ADP modifications may only be deducted if they are specifically required by an tailored to a particular system and not applicable to other systems being compared. For instance, an ADP modification which yields more accurate counts of the number of units of infant formula sold is considered a good management practice appropriate to any type of cost containment system. In fact, FNS would expect the ADP costs of a single-supplier system to be the least expensive as the ADP system must account for the sales of only one brand of infant formula. Should a State agency determine that changes in its ADP system would be necessary to accommodate the requirements of a particular cost containment system, the Department strongly encourages such State agencies to examine ADP systems already in operation in other States in order to minimize the cost of new systems development. System transfers should be given every consideration.

b. *Training Costs.* Reasonable costs to re-educate and inform participants, retail vendors, local agency staff, and the health and medical community concerning the purpose and procedures of the new cost containment system are deductible. Costs for ongoing training or refresher training are not deductible as these are ongoing operational costs. All such administrative costs must be itemized and justified in terms of the specific tasks performed and their relationship to the particular cost containment system.

Section 246.16(m)(2)(ii) provides that State agencies may not consider the following in the cost comparison:

a. *Procurement costs.* In order to undertake a comparative analysis of alternate infant formula cost containment systems, the State agency must proceed with whatever formal procurement actions the State requires in order to obtain legally binding contractual offers from formula manufacturers. Procurement costs (e.g. bid preparation and evaluation, etc.) incurred in this process are therefore not differentially attributable to a particular alternative the State wishes to consider. In effect, the comparative approach requires a single procurement action in which bids are solicited for at least two alternative forms of infant formula cost containment. Therefore, § 246.16(m)(2)(ii) prohibits State agencies from deducting these procurement costs from food cost savings in the preparation of comparative cost analysis.

b. *Loss of rebates.* In the past, some State agencies have had provisions in their cost containment contracts that void or limit savings under the contract should a State agency formally solicit another cost containment contract. While such provisions are specifically prohibited from inclusion in future contracts by section 17(h)(8)(F) of the Child Nutrition Act (as amended by section 123(a)(6) of Public Law 101–147), some State agencies currently hold contracts containing this type of limitation. Although this rule does not retroactively void these provisions, § 246.16(m)(21)(iii) prohibits State agencies from deducting any loss of rebate savings that would result from such an action from the food savings estimate. The loss of rebate savings, if a manufacturer exercises this contractual option, is a consequence of compliance with the mandates of Public Law 101–147, not of any particular rebate arrangement the State agency may wish to consider.

After all of the administrative cost adjustments are made to the food cost savings estimate, the savings under each system are compared. The State agency must then award the cost containment contract under the competitive single-supplier system unless the adjusted food cost savings under an alternative cost containment system is greater than, or at least equal to, the savings which would be obtained under the competitive single-supplier system. If the alternative system yields adjusted food cost savings at least equal to the competitive single-supplier system, the State agency may select the alternative system, but it must first submit the supporting cost-comparison analysis to FNS for approval prior to awarding the contract.

Granting of Waivers

Section 123(a)(b) of Public Law 101–147 (amending section 17(h)(8)(D), of the Child Nutrition Act of 1966), stipulates conditions for waivers of the requirement that any State agency opting to use a system other than a competitive bidding system must adopt a system with savings equal to or greater than competitive bidding would yield. In particular, the law requires the Secretary to waive this requirement if compliance would be inconsistent with the efficient or effective operation of the program or the amount of savings is sufficiently minimal that the difference is not significant. The law further requires the Secretary to prescribe criteria to implement this waiver provision. It should be noted that this authority allows a waiver of the requirement that States with retail food delivery system adopt the cost containment system with the greatest savings; it is not a waiver from the State agency's requirement to implement a cost containment system altogether.

Accordingly, § 246.16(n) sets forth the criteria for obtaining a waiver. First, a State agency may request a waiver only after completing the cost comparison required by § 246.16(m)(2)(iii). Second, all waiver requests must be accompanied by a State Plan amendment. Third, in order to meet the criterion of "minimal difference", the rule specifies that the difference between the proposed system and a competitive bidding system is 3 percent or less of the system offering the least savings; except that, in no case will a savings difference in excess of $100,000 *per annum* be considered "minimal". The Department feels that given congressional focus on savings that such waivers should not be freely granted and that the 3 percent minimal difference standard provides State agencies some flexibility while maximizing program savings.

Finally, § 246.16(n)(2) provides that if the difference between a competitive bidding system and the system a State would prefer to implement fails to meet this definition of "minimal", the State agency must demonstrate to FNS that to implement a competitive bidding would cause inefficient or ineffective program operations.

Congressman Miller of California noted that, while the law allows the Secretary to grant a waiver to State agencies which do not wish to accept the cost containment method offering the greatest savings, such waivers are only appropriate when a State agency demonstrates that this rebate option would interfere with efficient and effective program operations. Congressman Miller amplified: "To date, about 20 States have instituted

competitive bidding and it has enhanced efficient and effective program operations in these States. Virtually all claims made in the past against competitive bidding have proven unfounded in these States by their actual experience in operating competitive bidding systems. We do not intend to see old arguments recycled and used as the basis for a waiver" (*Congressional Record,* October 10, 1989, H6869). Key members of the House and Senate adopted an analysis of the legislation which states, in part, that "The legislation includes a waiver authority so that if *a new circumstance should arise* in the future under which compliance with these requirements would actually have an adverse impact on the program in a State, the Secretary would be able to grant an exception" (*Congressional Record,* October 24, 1989, S14024 and October 10, 1989, H6864, emphasis added).

In light of the narrow language of the law and these indications of Congressional intent, the Department intends to grant waivers based on ineffective and inefficient program operations in very limited instances. Only State agencies which encounter unforeseen circumstances of an extraordinary nature that would render implementation of the most favorable infant formula cost containment system a detriment to efficient and effective program operations or be harmful to the delivery of program benefits will be granted a waiver. State agencies submitting waiver requests must provide concrete evidence and examples to substantiate their assertions.

In the past, State agencies have cited several reasons for not pursuing the competitive single-supplier system. However, problems related to these reasons have not materialized among State agencies using single-supplier systems. Therefore, 246.16(n)(2) specifically lists these reasons as not being an adequate basis of an approvable waiver: preservation of participant preference for otherwise nutritionally equivalent infant formulas; maintenance of health care professionals' prerogatives to prescribe otherwise nutritionally equivalent infant formulas for non-medical reasons; potential loss of free or otherwise discounted materials to WIC clinics and other health care facilities; potential inability of a manufacturer selected in accordance with applicable State procurement procedures to supply contractually-specified amounts of infant formula; and the possibility of interrupted infant formula supplies to retail outlets as a consequence of entering into a contract with a single manufacturer.

In the event a waiver is granted by FNS, the State agency must still implement the alternative system it has chosen within the deadlines set forth in this rule.

Implementation of cost containment systems must be done in a manner which ensures that savings from an existing system do not lapse before another system is in effect. Except in the instances noted below, a State agency using a retail food delivery system which is not using a competitive single-supplier contract for infant formula may not extend the expiration date of its current or future contract(s) without complying with the provisions of this rule. The dates by which a State agency, except those which have obtained FNS concurrence that an infant formula cost containment system is not feasible, must implement such a system in accordance with the provisions of this rule to avoid penalties for noncompliance are as follows:

1. State agencies without any infant formula cost containment system. Any State agency which does not have an infant formula cost containment system in place on the date of publication of this rule shall fully implement a system in accordance with this rule by November 10, 1990.

2. State agencies using a retail food delivery system with an infant formula cost containment contract in effect on November 10, 1989. As mandated by section 123(a)(6) of Public Law 101-147 (amending section 17(h)(8)(C) of the Child Nutrition Act of 1966), State agencies with infant formula contracts in effect on the date of the law's enactment (November 10, 1989), may continue these contracts until expiration. Before the expiration of the current contract, however, the State agency must conduct a new procurement in accordance with § 246.16(m) of this rule. If more than one contract was in effect on November 10, 1989 the State agency is not required to comply with § 246.16(m) until the latest expiration date of the contracts in effect on November 10, 1989. The State agency may extend other manufacturers' contracts to coincide with the expiration of the latest contract.

State agencies which have contracts expiring before June 13, 1990, may request, in writing, permission from FNS to postpone implementation for up to 120 days from the latest expiration date if they expect to have difficulties completing the bid process required by this rule in a timely manner. During the postponement period, State agencies may extend or otherwise continue with existing contracts until a new procurement can be completed, insofar as manufacturers under contract at that time are willing to do so.

3. Previously exempt Indian State agencies. If an Indian State agency operating a retail food delivery system expands its Program participation above 1000 and thereby loses its exemption from the requirements of § 246.16(m) regarding the method of cost containment for infant formula, that Indian State agency shall comply with § 246.16(m) in accordance with time frames established by FNS on a case-by-case basis.

4. Cost containment for supplemental foods other than infant formula. Time frames for implementation of cost containment systems for WIC foods other than infant formula (when found by the State agency to be practicable) shall be established by the State agency and notification must be given to FNS by means of the State agency's State Plan.

5. Postponements for procurement delays and disputes. If a State agency is unable to implement a cost containment system within the required deadlines due to complications in completing the bidding process (e.g., resolving a bid protest), the State agency may request a postponement from the deadlines specified in this rule. Such requests will be reviewed carefully, and FNS will advise the State agency of a new implementation deadline consistent with the circumstances faced by the State agency. Postponements *may* also be granted pending the resolution of disputes between FNS and the State agency concerning: (1) The determination that a cost containment system other than a competitive single-supplier system generates equal or greater potential savings or, (2) the denial of a waiver to implement the system providing the lesser savings due to the assertion that such system would be inconsistent with the efficient or effective operation of the Program. The postponement period would be no longer than 120 days.

FNS believes that these implementation deadlines allow State agencies reasonable time to prepare and implement cost containment systems pursuant to the requirements of this rule without administrative hardship and while meeting the congressional goal of maximizing Program savings.

Submission of Cost Comparisons and Waiver Requests to FNS

Currently, State agencies are expecte to describe their cost containment

measures as part of the description of their food delivery system in their State Plan (which is required by § 246.4(a)(14)). Section 246.4(a)(14)(x) as added by this rule makes this requirement explicit and further provides that a State Plan amendment must be submitted to FNS for approval at least 90 days in advance of implementing a new cost containment system or changing an existing system.

In addition, any State agency operating a retail food delivery system which plans to implement an infant formula cost containment system other than a competitive bidding system or wishes to receive a waiver in order to use an alternative cost containment system even though the cost comparison data indicates that it would yield less savings than a competitive bidding system must also submit a State Plan amendment at least 90 days in advance of the proposed effective date. Such State agencies must include with their State Plan amendment the cost comparison analysis required by § 246.16(m)(2) and, when seeking a waiver based upon interference with efficient or effective program operations, documentation of the basis for such a claim. The current State Plan approval deadlines contained in § 246.4(a) allow FNS 30 days in which to approve or disapprove a State agency's plans. Thus, if a State agency submits its amendment 90 days in advance, this allows FNS adequate time to review the assumptions made in the cost comparison and approve or disapprove of its conclusions before the State agency must enter into its cost containment contract.

Should FNS dispute the State agency's comparative method calculations and documentation which support a determination that a cost containment system other than a competitive single-supplier system would yield equal or greater savings or that a comparative system would be inconsistent with efficient or effective program operations, FNS will consider the amendment incomplete and will provide to the State agency a written statement outlining the disputed issues within 15 days of receipt of the State Plan amendment. In the case of such disputes, the State agency may not enter into any new infant formula contract without FNS consent until the disputed issues are satisfactorily resolved. If necessary, FNS may grant a postponement, as allowed under § 246.16(o)(5) of this rule, to permit adequate time to resolve such disputes. However, in the event the disputes are not resolved by the end of this postponement, the State agency must proceed with the cost containment system judged by FNS to comply with the provisions of this rule, or the State agency will be subject to the penalties set forth below.

Assistance on Rebate Contracts

Section 17(h)(8)(E) of the Child Nutrition Act (as amended by Section 123(a)(6) of Public Law 101–147) requires the Secretary to provide technical assistance to small Indian State agencies, and, on request, to other State agencies that do not have large caseloads and that desire to consider a cost containment system that covers more than one State agency.

State agencies may request assistance from FNS regional offices for information on securing single-State or multi-State rebate contracts. FNS will provide such information as is available or will direct the inquiring State agency to other State agencies with appropriate experience.

Implementation Time Frames

Section 123(a)(6) of Public Law 101–147 (amending section 17(h)(8)(A) of the Child Nutrition Act of 1966) specifies that no State agency may receive its funding allocation unless, by August 30, 1989 or a subsequent date set by the Secretary, it has initiated action to implement cost containment measures for infant formula and, where practicable, other WIC foods, or has demonstrated that implementation would not lower cost or would interfere with the delivery of food or formula to program participants. Section 17(h)(8)(B) further provides that in meeting this requirement, State agencies with retail food delivery systems must adopt a competitive bidding system, or an alternative cost containment system yielding equal or greater savings for the procurement of infant formula. No State agency is exempt from the first requirement and the only exceptions from the second are Indian State agencies with fewer than 1,000 participants and State agencies which have obtained a waiver from FNS. State agencies with infant cost containment contracts in effect on the date of enactment (November 10, 1989) are not required to comply until the latest expiration date of such contracts. Presently, all State agencies have initiated action to implement infant formula cost containment systems or have received FNS's concurrence in their determination that such an action is not feasible. However, not all State agencies have fully implemented their systems, and others have systems which do not comply with the new competitive bidding/comparative cost requirements. In order to ensure that maximum savings are obtained as soon as possible, and in accordance with the Secretary's authority to extend the August 30, 1989 deadline, § 246.16(o) as added by this rule establishes the time frames for full implementation of cost containment systems.

Penalties for Noncompliance

As discussed above, section 123(a)(6) of Public Law 101–147 (amending section 17(h)(8)(A) of the Child Nutrition Act of 1966) specifies that no State agency may receive its funding allocation unless, by August 30, 1989 or such subsequent date as the Secretary may specify, it has "initiated action to implement" cost containment measures for infant formula and, where practicable, other WIC foods, or has demonstrated that implementation would not lower costs or would interfere with the delivery of formula or foods to participants in the program. However, the provisions of Public Law 101–147 also mandate that in carrying out this requirement all State agencies with retail food delivery systems adopt a competitive bidding system, or an equally cost effective cost containment system, for the procurement of infant formula.

Given that it would be impossible to determine if a State agency has complied with the latter provision if it is only in the initial stages of implementation and given the extended deadlines established in this rule for full implementation of cost containment systems, penalties for noncompliance will only accrue when a State agency has failed to fully implement the cost containment provisions of this rule within the extended deadlines discussed above. Accordingly, § 246.16(p) provides that State agencies which FNS determines to be in noncompliance with the cost containment requirements of the regulations shall not draw down on or obligate any Program grant funds, nor will FNS make any further Program funds available to such State agencies, until such State agencies comply with these requirements.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the Preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: Sec. 123, Pub. L. 101–147, 103 Stat. 894: Sec. 645, Pub. L. 100–460, 102 Stat. 2229; secs. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786): sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786): secs. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786): sec. 3, Pub. L. 96–499, 94 Stat. 2599; sec. 203, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.2, a definition of "cost containment measure" is added in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Cost containment measure means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in its approved State Plan of operation and administration.

* * * * *

3. In Section 246.4, a new paragraph (a)(14)(x) is added to read as follows:

§ 246.4 State Plan.

(a) * * *

(14) * * *

(x) Except for State agencies with an FNS-approved feasibility study demonstrating the infeasibility of implementing a cost containment system, a description of its cost containment systems. In addition, a State agency which is: Planning to implement a cost containment system for the first time; planning to change or modify its current system; seeking approval of a system instead of a competitive bidding system (in accordance with § 246.16(m)(2)(iii) of this part); or requesting a waiver under § 246.16(n) of this part shall, at least 90 days before the proposed effective date of its system change, submit a State Plan or Plan amendment, describing its proposed cost containment system, any cost comparison analyses conducted under § 246.16(m), and for waivers based on interference with efficient or effective program operations, documentation of that claim. If FNS disputes the calculations or documentation supporting a cost comparison analysis or waiver request, it shall deem the plan amendment containing that information incomplete under § 246.4(a), and shall provide the State agency with a written statement outlining disputed issues within 15 days of receipt of the State Plan amendment. In the case of such disputes, the State agency may not enter into any infant formula cost containment contract without FNS consent until the disputed issues are resolved. If necessary, FNS may grant a postponement under § 246.16(o)(5) of this rule. If disputed issues remain unresolved at the end of the postponement period, the State agency must proceed with the cost containment system judged by FNS to comply with the provisions of this rule, or the State agency will be subject to the penalties set forth in § 246.16(p) of this part.

* * * * *

4. In § 246.16, paragraphs (l) through (q) are added to read as follows:

§ 246.16 Distribution of funds.

* * * * *

(l) *Cost-containment measures for WIC Program foods.* No State agency may receive its allocation unless on or before August 30, 1989 (or a subsequent date established by the Secretary for any State) such State has: (1) Examined the feasibility of implementing cost containment measures with respect to procurement of infant formula, and, where practicable, other foods necessary to carry out the program; and (2) initiated action to implement such measures unless the State agency demonstrates, to the satisfaction of the Secretary, that such measures would not lower costs or would interfere with the delivery of formula or foods to participants in the program.

(m) *Requirements for infant formula procurement.* Unless granted a waiver under paragraph (n) of this section, all State agencies with retail food delivery systems (except Indian State agencies with 1000 or fewer participants in April of any fiscal year, which shall be exempted for the following fiscal year) shall implement infant formula cost containment measures for each of the types and forms of infant formulas prescribed to the majority of participants, i.e., milk and soy-based iron-fortified, liquid concentrate formulas, or whatever other types and forms of formula routinely prescribed, through one of the following two methods:

(1) *Single-supplier competitive method.* The single-supplier competitive method is a solicitation of sealed competitive bids from infant formula manufacturers for a competitive single-supplier system in which the manufacturer offering the lowest net wholesale cost per unit of infant formula or highest rebate per unit of infant formula is awarded the contract to provide all infant formula of the forms and types specified in the invitation for bids for the State agency's WIC Program (except alternate brands prescribed by a physician).

(2) *Comparative method.* The comparative method is a procedure in which bids for two or more types of cost containment systems are simultaneously solicited and a contract or contracts are awarded under the system which will provide the greatest savings. This system shall include the solicitation of bids under the single-supplier competitive system described in paragraph (m)(1) of this section. The State agency may prescribe standards of its choice for the other alternative cost containment systems, provided that conditions established for each system addressed in the invitation for bids include identical bid specifications for the contract period length and the types and forms of infant formula products to be included in the systems. Additionally, the rate of utilization of the various types and forms of formula must be comparable. The State agency shall employ the following procedure in conducting a cost comparison to determine which system offers the greatest savings over the entire effective contract period specified in the invitation for bids.

(i) *Food cost savings*—(A) *Single Supplier Competitive System.* The State agency shall project food cost savings in the single-supplier competitive system based on the rebate amount or net wholesale price and the total number of units of the specified types and forms of infant formula to be purchased under the Program less the number of units of alternative brands anticipated to be prescribed by physicians and purchased by participants. If the number of units of non-specalized, non-contract formula expected to be purchased exceed 4 percent of the anticipated total number of units, the State agency shall submit empirical evidence in support of the percentage to FNS for review and approval prior to issuing the invitation for bids.

(B) *Alternative Cost Containment Systems.*—The State agency shall project food cost savings under alternative rebate systems based on the rebate amount or wholesale net price, the total number of units of the specified types and forms of the infant formula to be purchased under the Program less the number of units of alternative brands anticipated to be prescribed by physicians and purchased by participants and the percentage of anticipated total WIC formula purchases attributable to each manufacturer. The State agency must use the aggregate market share of the manufacturers

submitting bids in calculating its cost savings estimate.

(C) *General.* In establishing the potential food cost savings under each system, the State agency shall take into consideration in its savings any inflation factors which would affect the amount of savings over the life of the contract. Further, the State agency shall not subtract any loss of payments which would occur under the terms of a current contract as the result of any State agency action to be effective after expiration of the contract.

(ii) *Administrative cost adjustment.* The State agency shall deduct from cost savings projected for each system under paragraph (m)(2)(i) of this section administrative costs associated with developing and implementing—but not operating—each cost containment system, including any anticipated costs for modifying its automated data processing system or components of its food delivery system(s), and of training participants, local agencies, vendors, and physicians on the purpose and procedures of the new system. For contracts of two years or less, such costs shall be proportionately distributed over at least a 2 year period. The State agency shall not deduct any costs associated with procurement. The State agency shall itemize and justify all administrative cost adjustments as necessary and reasonable for the development and implementation of each system.

(iii) *Final cost comparison.* The State agency shall calculate the food cost savings and deduct the appropriate administrative costs for each system for which bids were received. The State agency must implement the competitive single-supplier system, unless its comparative cost analysis shows that, over the length of the contract stipulated in the bid invitation, an alternative system offers savings at least equal to, or greater than, those under the competitive single-supplier system. If the comparative cost analysis permits selection of the alternative system and the State agency wishes to implement that system, it must first submit a State Plan amendment with the calculations and supporting documentation for this cost analysis to FNS for approval. Only after the calculations are approved by FNS may the State agency award the contract or contacts under the alternative system.

(n) A State agency which, after completing the cost comparison in paragraph (m)(2)(iii) of this section, is required to implement the competitive single-supplier system for infant formula procurement, may request a waiver to permit it to implement an alternative system. State agencies shall support all waiver requests with documentation in the form of a State Plan amendment as required under § 246.4(a)(14)(x) of this part and may submit such requests only in either of the following circumstances:

(1) The difference between the competitive single-supplier system and the system preferred by the State agency is less than 3 percent of the savings anticipated under the latter system and not more than $100,000 per annum.

(2) The competitive single-supplier system would be inconsistent with efficient or effective operation of the program. Examples of justifications FNS will not accept for a waiver, include, but are not limited to: Preservation of participant preference for otherwise nutritionally equivalent infant formulas; maintenance of health care professionals' prerogatives to prescribe otherwise nutritionally equivalent infant formulas for non-medical reasons; potential loss of free or otherwise discounted materials to WIC clinics and other health care facilities; potential inability of a manufacturer selected in accordance with applicable State procurement procedures to supply contractually-specified amounts of infant formula; and the possibility of interrupted infant formula supplies to retail outlets as a consequence of entering into a contract with a single manufacturer.

(o) *Implementation time frames.* All state agencies except those with an FNS approval feasibility study demonstrating the infeasibility of implementing a cost containment system shall continuously operate such a system, in accordance with the following time frames:

(1) Any State agency without an infant formula cost containment system in effect as of March 15, 1990 shall fully implement a system not later than November 10, 1990.

(2) A State agency operating a retail food delivery system which has a cost containment contract for infant formula in effect on November 10, 1989 shall enter into a contract or contracts in compliance with paragraph (m) of this section to be effective not later than the expiration date of the last of its current contracts. A State agency with more than one contract in effect as of November 10, 1989 may extend all contracts to the expiration date of the last of these contracts; however, the State agency may not renew, extend, or otherwise continue such contracts after that date, except in the following circumstances:

(i) The State agency's contract expires before May 14, 1990. Such State agencies will be granted a 120-day extension for implementing an infant formula cost containment system which complies with paragraph (m) of this section upon written request to FNS.

(ii) The State agency has obtained a postponement of implementation under paragraph (o)(5) of this section.

(3) When a State agency finds that it is practicable and feasible to implement a cost containment system for any WIC food other than infant formula, the State agency shall fully implement that system in accordance with time frames established by the State agency and notification must be given to FNS by means of the State agency's State Plan.

(4) If an Indian State agency operating a retail food delivery system expands its Program participation above 1000 and thereby loses its exemption from the requirements of § 246.16(m) regarding the method of cost containment for infant formula, that Indian State agency shall begin compliance with § 246.16(m) in accordance with times frames established by FNS on a case-by-case basis.

(5) A State agency may request a postponement of the deadlines established in this paragraph when the State agency has taken timely and responsible action to implement a cost containment system within the deadlines but has been unable to do so due to procurement delays, disputes with FNS concerning cost containment issues during the State Plan approval process, or other circumstances beyond its control. Such request shall be submitted prior to the earlier of the expiration of its current system or the deadline established under this paragraph. The postponement period shall be no longer than 120 days. If a postponement is granted, the State agency may extend, renew or otherwise continue an existing system during the period of the postponement.

(p) *Penalty for noncompliance.* Any State agency which FNS determines to be in noncompliance with the cost containment requirements of this part shall not draw down on or obligate any Program grant funds, nor will FNS make any further Program funds available to such State agency, until such State agency complies with these requirements.

(q) *Cost Containment Contract provisions.* State agencies shall not issue invitations for bids or enter into contracts which:

(1) Prescribe conditions that would void, reduce the savings under or otherwise limit the original contract if the State agency solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect

after the expiration of the original contract;

(2) Exclude from consideration in the bidding evaluation any infant formula manufacturer in compliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321 *et seq.*); or

(3) Require infant formula manufacturers to submit bids on more than one of the systems specified in the invitation for bids.

§ 246.29 [Removed]

5. Section 246.29 is removed.

Dated: March 9, 1990.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

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Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 90-031]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by expanding the quarantined area comprised of portions of Los Angeles County and Orange County in California. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective March 9, 1990. Consideration will be given only to comments received on or before May 14, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-031. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations), in a document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 (54 FR 35629-35635, Docket Number 89-146). Circumstances have compelled us to make a series of amendments to these regulations, in the form of interim rules, in an effort to prevent the further spread of the Mediterranean fruit fly. These amendments were made effective on September 14, October 11, November 17, and December 7, 1989, and on January 3, January 25, and February 16, 1990 (54 FR 38643-38645, Docket Number 89-169; 54 FR 42478-42480, Docket Number 89-182; 54 FR 48571-48572, Docket Number 89-202; 54 FR 51189-51191, Docket Number 89-206; 55 FR 712-715, Docket Number 89-212; 55 FR 3037-3039, Docket Number 89-227; 55 FR 6353-6355, Docket Number 90-014).

These areas remain infested with Mediterranean fruit fly. The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly into noninfested areas.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, an agency of the U.S. Department of Agriculture, reveal that additional infestations of Medfly have been discovered in Los Angeles County in areas near Pomona and Brea, and in Orange County near Garden Grove and Westminster, California.

The regulations in § 301.78-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found.

In accordance with these criteria, we are amending § 301.78-3 of the regulations by expanding the quarantined area comprised of a portion of Los Angeles and Orange Counties, California. A description of the quarantined area is set forth in full in the rule portion of this document. The quarantined areas in Santa Clara and San Bernardino Counties, California, are not affected by this rule.

There does not appear to be any reason to designate other additional quarantined areas in California. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Emergency Action

James W. Glosser Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread to noninfested areas of the United States, it is necessary to act immediately to prevent its spread.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a

significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from portions of Los Angeles and Orange Counties, California. Approximately 864 entities within these newly regulated areas will be affected by this rule. All would be considered small entities. They include 478 fruit/produce markets, 163 nurseries, 155 vendors, 46 commercial growers on approximately 300 acres, 10 backyard growers with approximately 20 acres, 2 farmers markets, 3 small packers, and 7 swapmeets. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of California. Most of these small entities sell regulated articles primarily for local intrastate movement, not interstate movement, and the sale of these articles would not be affected by this regulation. Many of these entities also sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities appears to be minimal. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paper Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the description of the quarantined area for Los Angeles County and Orange County, California, is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles and Orange Counties

That portion of the counties in the San Fernando Valley, San Gabriel Valley, Pomona, Garden Grove and Westminster areas bounded by a line drawn as follows: Beginning at the intersection of State Highway 30 and Towne Avenue; then southerly along this avenue to its intersection with State Highway 60; then westerly along this highway to its intersection with the Los Angeles-San Bernardino County line; then southerly and westerly along this county line to its intersection with Grand Avenue; then westerly along this avenue to its intersection with Diamond Bar Boulevard; then southwesterly along this Boulevard to its intersection with Pathfinder Road; then westerly along this road to its intersection with State Highway 57; then southerly along this highway to its intersection with Bristol Street; then southerly along this street to its intersection with Segerstrom Avenue; then westerly along this avenue to its intersection with Slater Street; then westerly along this street to its intersection with Springdale Street; then northerly along this street to its intersection with Edinger Avenue; then westerly along this avenue to its intersection with Bolsa Chico Road; then northerly along this road to its intersection with Interstate Highway 405; then northwesterly and westerly along this highway to its intersection with Interstate Highway 605; then northerly along this highway to its intersection with Carson Street; then westerly along this street to its intersection with Lakewood Boulevard; then northerly along this Boulevard to its intersection with Del Amo Boulevard; then westerly along this boulevard to its intersection with Downey Avenue; then northerly along this avenue to its intersection with Artesia Boulevard; then westerly along this boulevard to its intersection with State Highway 91; then westerly along this highway to its intersection with Wilmington Avenue; then southerly along this avenue to its intersection with University Drive; then westerly along this drive to its intersection with Avalon Boulevard; then southerly along this boulevard to its intersection with 192nd Street; then westerly along this street to its intersection with Main Street; then southwesterly along this street to its intersection with Interstate Highway 405; then northwesterly along this highway to its intersection with Prairie Avenue; then northerly along this avenue to its intersection with Florence Avenue; then easterly along this avenue to its intersection with Vermont Avenue; then northerly along this avenue to its intersection with Slauson Avenue; then easterly along this avenue to its intersection with Central Avenue; then northerly along this avenue to its intersection with 41st Street; then easterly along this street to its intersection with 38th Street; then easterly along this street to its intersection with 37th Street; then easterly along this street to its intersection with Soto Street; then northeasterly along this street to its intersection with Whittier Boulevard; then westerly along this boulevard to its intersection with 6th Street; then northwesterly along this street to its intersection with Broadway; then southwesterly along Broadway to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Western Avenue; then north along this avenue to its intersection with Venice Boulevard; then westerly along this boulevard to its intersection with Crenshaw Boulevard; then northeasterly along this boulevard to its intersection with Olympic Boulevard; then westerly along this boulevard to its intersection with Highland Avenue; then northerly along this avenue to its intersection with U.S. Highway 101; then northwesterly along this highway to its intersection with Interstate Highway 405; then northerly along this highway to its intersection with Victory Boulevard; then westerly along this boulevard to its intersection with Balboa Boulevard; then northerly along this boulevard to its intersection with Foothill Boulevard; then easterly and southerly along this boulevard to its intersection with Maclay Avenue; then northeasterly along this avenue to its intersection with Interstate Highway 210; then southeasterly along this highway to its intersection with Paxton Street; then northeasterly along this street to its intersection with the Los Angeles city limits; then northerly, easterly, and southerly along the Los Angeles city limits to its intersection with the Glendale city limits; then southerly along the Glendale city limits to its intersection with the Angeles National Forest boundary; then easterly, southerly, and easterly along this boundary to its intersection with the Pasadena city limits; then northerly, easterly, and southerly along the Pasadena city limits to its intersection with the Angeles National Forest boundary, then southerly and easterly along this boundary to its intersection with the Sierra Madre city limits; then northerly and easterly along the Sierra Madre city limits to its

intersection with the Arcadia city limits; then easterly along the Arcadia city limits to its intersection with the Monrovia city limits; then northerly and easterly along the Monrovia city limits to its intersection with the Duarte city limits; then easterly and southerly along the Duarte city limits to its intersection with the Azusa city limits; then easterly and southerly along the Azusa city limits to its intersection with the Glendora city limits; then northerly and easterly along the Glendora city limits to its intersection with the San Dimas city limits; then easterly and southerly along the San Dimas city limits to its intersection with the Angeles National Forest boundary; then easterly along this boundary to its intersection with the La Verne city limits; then northerly, easterly, and southerly along the La Verne city limits to its intersection with State Highway 30; then easterly along this highway to the point of beginning.

* * * * *

Done in Washington, DC, this 9th day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-5976 Filed 3-14-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333 and 448

[Docket No. 76N-0482]

RIN 0905-AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC First Aid Antibiotic Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that amends the final monograph for over-the-counter (OTC) first aid antibiotic drug products in 21 CFR 333.120 to allow bacitracin-polymyxin B sulfate topical aerosol to include a suitable local anesthetic as an active ingredient. FDA is concurrently amending the antibiotic regulations in 21 CFR 448.510f(a)(1) to be consistent with the mongraph for OTC first aid antibiotic drug products. This amendment of the final monograph is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective March 15, 1991; notice of participation, and request for hearing on the amendment to 21 CFR 448.510f(a)(1) by April 16, 1990; data, information, and analyses to justify a hearing on the amendment to 21 CFR 448.510f(a)(1) by May 14, 1990.

FOR FURTHER INFORMATION CONTACT:

William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 11, 1987 (52 FR 47312), FDA issued a final monograph for OTC first aid antibiotic drug products (21 CFR part 333 subpart B). The monograph provided for combinations of bacitracin-polymyxin B sulfate topical aerosol (§ 333.120(a)(3)) and bacitracin or bacitracin-neomycin sulfate-polymyxin B sulfate ointment and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient (§ 333.120(b) (1) and (2)).

On January 27, 1989, FDA received a citizen petition (Docket No. 76N-0482/CP0002) requesting the amendment of 21 CFR 333.120 and 21 CFR 448.510f(a)(1) to include a suitable local anesthetic in the combination bacitracin-polymyxin B sulfate topical aerosol. Specifically, the petition requested that the following paragraph be added to § 333.120(b):

(3) Bacitracin-polymyxin B sulfate topical aerosol containing, in each gram, 500 units of bacitracin and 5,000 units of polymyxin B and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle, packaged in a pressurized container with inert gases: *Provided*, That it meets the tests and methods of assay in § 448.510f(b).

The petition also requested that the following sentence be added to § 448.510f(a)(1): "It may contain a suitable local anesthetic."

After reviewing the citizen petition, the agency concluded that there was sufficient evidence to generally recognize the requested combination as safe and effective and not misbranded for OTC first aid antibiotic-anesthetic use. The agency's proposed regulation, in the form of a proposed amendment of the final monograph for OTC first aid antibiotic drug products, was published in the **Federal Register** of August 18, 1989 (54 FR 34188). In that document, the agency proposed to amend 21 CFR 333.120 and 448.510f(a)(1) to allow bacitracin-polymyxin B sulfate topical aerosol to include a suitable local anesthetic as an active ingredient. Interested persons were invited to submit written comments by October 17, 1989, and to submit requests for an informal conference on the proposed change in § 448.510f(a)(1) by September 18, 1989.

No comments were received in response to the proposed amendments and no requests for an informal conference were received in response to the proposed amendment to 21 CFR 448.510f(a)(1). However, the agency wants to acknowledge that a second citizen petition (Docket No. 76N-0482/CP0003) making the same request was received on March 14, 1989. The second petition noted the existence of the first petition, stated that it wished to maintain its status as a separate petitioner, and stated its belief that it would be appropriate for the agency to take action on both petitions at the same time. Although the second petition inadvertently was not mentioned in the August 18, 1989 proposed rule, this final rule addresses both petitions simultaneously.

As discussed in the proposal (54 FR 34188), the agency advised that any final rule resulting from the proposal would be effective 12 months after its date of publication in the **Federal Register**. Therefore, on or after March 15, 1991, any OTC drug product that is not in compliance with the final rule may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (54 FR 34188). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this amendment of the final monograph for OTC first aid antibiotic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a

significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC first aid antibiotic drug products is not expected to pose such an effect on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by the amendment to 21 CFR 448.510F(a)(1) may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before April 16, 1990, a written notice of participation and request for hearing, and (2) on or before May 14, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgement against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, the filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR

Part 333:

First aid antibiotic drug products, Labeling, Over-the-counter drugs.

Part 448:

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, subchapter D of chapter I of title 21 of the Code of Federal Regulations is amended as follows:

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 333.120 is amended by adding new paragraph (b)(3) to read as follows:

§ 333.120 Permitted combinations of active ingredients.

* * * * *

(b) * * *

(3) Bacitracin-polymyxin B sulfate topical aerosol containing, in each gram, 500 units of bacitracin and 5,000 units of polymyxin B and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle, packaged in a pressurized container with suitable inert gases: *Provided,* That it meets the tests and methods of assay in § 448.510f(b) of this chapter.

PART 448—PEPTIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 448 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. Section 448.510f is amended by revising paragraph (a)(1) to read as follows:

§ 448.510f Bacitracin-polymyxin B sulfate topical aerosol.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin-polymyxin B sulfate topical aerosol is bacitracin and polymyxin B sulfate in a suitable and harmless vehicle, packaged in a pressurized container with a suitable and harmless inert gas. Each gram contains 500 units of bacitracin and 5,000 units of polymyxin B. It may contain a suitable local anesthetic. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin used conforms to the standards prescribed by § 448.10(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

* * * * *

Dated: February 20, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–5864 Filed 3–14–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF STATE

22 CFR Parts 60, 61, 62, 63, and 65

[Public Notice 1171]

South Africa and Fair Labor Standards

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Comprehensive Anti-Apartheid Act of October 2, 1986 (Pub. L. 99–440) contains provisions on the fair labor standards to be implemented by U.S. firms in South Africa. This final rule implements the requirements of the Act to remove Namibia from the scope of application of the standards upon Namibia's independence on March 21, 1990.

EFFECTIVE DATE: March 21, 1990.

FOR FURTHER INFORMATION CONTACT: Robert L. Bruce, Office of Southern African Affairs, (202) 647–8433, or John R. Byerly or Antonio F. Perez, Office of Legal Adviser, (202) 647–4110, Department of State.

SUPPLEMENTARY INFORMATION: Section 2 of Executive Order 12532 of September 9, 1985 (50 FR 36861) deals with labor practices of U.S. nationals and their firms in South Africa. On November 8, 1985 the Department of State published draft implementing regulations as a proposed rule for public comment (50 FR 46455). The final rule was published on December 31, 1985 (50 FR 53308).

The Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99–440) ("the Act") codified the measures required under

the September 9, 1985 Executive Order. The Act contains a Code of Conduct (section 208) which codifies the fair labor standards specified in Executive Order 12532. It also contained several provisions relating to the fair labor standards to be implemented by U.S. firms. These provisions were implemented by the final rule that was published by the Department of State on October 30, 1986 (51 FR 39655).

In addition, section 3(6) of the Act defined South Africa for purposes of the Act as including any territory under the administration, legal or illegal, of South Africa. Namibia (a non-self governing territory under the U.N. Charter) was at the time of the enactment of the Act under such administration. Accordingly, the regulations in parts 60–65 were extended to U.S. nationals employing more than 25 individuals in Namibia. A new § 62.4 was added to the regulations to require such firms to register with the Department of State not later than November 30, 1986.

The Department of State has determined that effective upon its independence on March 21, 1990, Namibia will no longer be administered by South Africa within the meaning of section 3(6) of the Act and will be instead an independent state. Any territory in fact administered by South Africa, notwithstanding any claim as to sovereignty by Namibia, will continue to be considered by the Department of State as included in South Africa for purposes of the Act, without prejudice to either South Africa's or Namibia's claims under international law.

These amendments deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The basic regulations that are amended by this final rule were the subject of public comment because of the desirability of obtaining the public's views. However, the amendments deal with the continuing implementation of statutory requirements that have entered into force and consequently the amended regulations are promulgated as a final rule.

List of Subjects

22 CFR Parts 60 and 61

Equal employment opportunity, South Africa, United States investments abroad.

22 CFR Parts 62 and 63

Equal employment opportunity, South Africa, Reporting and recordkeeping requirements, United States investments abroad.

22 CFR Part 65

Equal employment opportunity, Penalties, South Africa, United States investment abroad.

For the foregoing reasons, title 22, chapter I, subchapter G, of the Code of Federal Regulations, is amended as set forth below:

PARTS 60, 61, 62, 63 AND 65 [AMENDED]

1. The authority citation for parts 60, 61, 62, 63, and 65 continues to read as follows:

Authority: Sec. 207, 208, 601, 603, and 604, Pub. L. 90–440 (22 U.S.C. 5035(c)).

§§ 60.1, 60.2, 61.1, 61.2, 62.2, 62.3 and 63.2 [Amended]

2. In 22 CFR parts 60, 61, 62, and 63, remove the words "South Africa and Namibia" and add, in their place, the words "South Africa" in the following places:

(a) Section 60.1(a);
(b) Section 60.2 (a), (b), and (c) introductory text;
(c) Section 61.1(a);
(d) Section 61.2(a);
(e) Section 62.2;
(f) Section 62.3(a);
(g) Section 63.2(b).

§ 65.1 [Amended]

3. In § 65.1(a), remove the words "South Africa or Namibia" and add, in their place, the words "South Africa".

§ 62.4 [Removed]

4. Section 62.4 is removed.

Dated: February 23, 1990.

Herman J. Cohen,

Assistant Secretary of State for African Affairs.

[FR Doc. 90–5789 Filed 3–14–90; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R–90–1476; FR–2795–F–01]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: February 23, 1990.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been raised from 9.50 percent to 10.00 percent.

Until recently, HUD regulated interest rates not only for the Section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Public Law 100–242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the Section 235 Program.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR part 50, which implement section 102(2)(C) of the National Environmental

Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*l*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10.00 percent per annum with respect to mortgages insured on or after February 23, 1990.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 10.00 percent per annum with respect to mortgages insured after February 23, 1990.

* * * * *

Dated: February 22, 1990.

Peter Monroe,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-5875 Filed 3-14-90; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of April 1990.

EFFECTIVE DATE: April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month—	The values for i_k are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_0
* * * * * * *																
April 1990	.08875	.08625	.08375	.08	.07625	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.05875

Issued at Washington, DC, on this 8th day of March 1990.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 90-5931 Filed 3-14-90; 8:45 am]

BILLING CODE 7708-01-M

COAST GUARD

33 CFR Part 100

[CGD 05-90-05]

Special Local Regulations for Marine Events, American Diabetes Association Choptank River Swim, Choptank River Bridge, Cambridge, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.512.

SUMMARY: This notice implements 33 CFR 100.512 for the swim portion of the American Diabetes Association Triathalon. The event will be held on June 3, 1990 in the Choptank River. The swim portion of the triathalon will consist of approximately 400 swimmers racing across the Choptank River. The course will begin at the sandy beach on the west side of the Gateway Marina entrance on the north shore of the Choptank River and end at Great Marsh Point on the opposite shore. These regulations restrict vessel navigation in the regulated area during the swim portion of the triathalon.

EFFECTIVE DATES: The regulations in 33 CFR 100.512 are effective from 7:00 a.m. to 10:30 a.m., June 3, 1990. If inclement weather causes postponement of the event, the regulations are effective from 7:00 a.m. to 10:30 a.m., June 4, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Mr. Fletcher Hanks, Race Chairman for American Diabetes Association Choptank River swim, submitted an application on January 1, 1990 requesting permission to hold the swim portion of this Triathalon on June 3, 1990. Since a portion of the Choptank River must be closed to traffic during this portion of the event, the special local regulations in 33 CFR 100.512 are implemented. These regulations are implemented by publication of this implementing notice in the **Federal Register** and a notice in the Fifth Coast Guard District Local Notice to Mariners.

Dated: March 7, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-5899 Filed 3-14-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-90-06]

Special Local Regulations for Marine Events; Chesapeake Bay Bridge Swim Race, Chesapeake Bay, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.507.

SUMMARY: This notice implements 33 CFR 100.507 for the Chesapeake Bay Bridge Swim Race, an annual event to be held on June 10, 1990. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATES: The regulations in 33 CFR 100.507 are effective from 7:00 a.m. to 2:15 p.m., June 10, 1990. If inclement weather causes postponement of the event, the regulations are effective from 7:00 a.m. to 2:15 p.m., June 17, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

Fletcher Hanks, Director of the Chesapeake Bay Bridge Swim Race, has submitted an application on January 1, 1990 to hold the race on June 10, 1990. Approximately 600 swimmers will start from Sandy Point State Park and swim between the William P. Lane Jr. Memoraial Twin Bridges to the Eastern Shore. Since this is the type of event contemplated by these regulations, and the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.507 are being implemented. Vessel traffic will be permitted to transmit the regulated area as the swim progresses, so commercial traffic should not be severely disrupted. These regulations are implemented by publication of this implementing notice in the **Federal Register** and a notice in the Fifth District Local Notice to Mariners.

Dated: March 7, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-5900 Filed 3-14-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3744-9]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is today disapproving a site-specific revision to the ozone portion of the Michigan State Implementation Plan (SIP) for Ford Motor Company's Romeo Tractor and Equipment Plant in Romeo, Michigan. USEPA is disapproving the revision because the State of Michigan failed to: (1) Provide adequate documentation that the compliance date extension for a number of paint operations is as expeditious as practicable in accordance with the Clean Air Act (CAA) and USEPA's policy; (2) demonstrate that the proposed emission limit of 4.8 lbs. of volatile organic compounds (VOC) per gallon of coating for the final repair operations constitutes Reasonably Available Control Technology (RACT), or that the existing RACT-based emission limit is technologically or economically infeasible for these operations; and (3) demonstrate that the requested relaxation of emission limits contained in Michigan's Rule 336.1621 would not interfere with timely attainment and maintenance of the ozone standard in the Detroit area.

As a result of today's disapproval of the revision request, the source remains subject to the requirements of Michigan's Rule 336.1621.

EFFECTIVE DATE: This final rulemaking becomes effective April 16, 1990.

ADDRESSES: Copies of the revision request and supporting data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 W. Allegan, Lansing, Michigan 48909.

FOR FURTHER INFORMATION CONTACT:

Maggie Green, Regulatory Analysis section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On May 13, 1985, the Michigan Department of Natural Resources (MDNR) submitted a SIP revision request for the Ford Motor Company's Romeo Tractor and Equipment Plant in the form of a Stipulation for Entry of Consent Order and Final Order No. 3-1985. The Order concerns Volatile Organic Compound (VOC) emissions from the Romeo plant located in Macomb County, Michigan, which is in an urban ozone nonattainment area. This proposed revision requests a compliance date extension for a number of paint operations and a relaxation of the VOC emission limits contained in Michigan's Rule 336.1621, for certain paint operations at the plant.

The Ford Motor Company's Romeo Tractor and Equipment Plant assembles and finishes a wide variety of heavy equipment for agricultural, construction and industrial applications. The plant includes six paint operations which are presently subject to Michigan Rule 336.1621, which establishes a VOC emission limit of 3.5 lbs. of VOC/gallon of coating, minus water, as applied for extreme performance coatings. Rule 336.1621 also specifies a final compliance date of December 31, 1983.

On July 20, 1988 (53 FR 27366), USEPA proposed to disapprove a revision to the Michigan SIP for the Ford Motor Company's Romeo Tractor Plant. Ford Motor Company commented on the proposed disapproval. Ford's comments, followed by USEPA's responses are set forth below. For a more detailed discussion of USEPA's rationale for disapproving this revision, see the proposed rulemaking.

Public Comments and USEPA's Responses

(1) *Ford Comment.* USEPA failed to act on this SIP revision within the 4-month period prescribed by Section 110 of the Clean Air Act. This principle has been verified in several court decisions resulting in dismissal of enforcement actions including: *American Cyanimid Co.* v. *USEPA*, 25 ERC 1585 (5th Cir. 1987); *United States* v. *Alcan Foil Products, et al*, (W.D. Ky., 1988); *United States* v. *GM Corporation*, 27 ERC 16657 (1988). After enforcement action was taken by USEPA, Ford closed down all its tractor and equipment coating operations on or before June 30, 1988. At this juncture, USEPA's proposed disapproval appears completely meaningless.

USEPA Response

The decisions in the cases cited by Ford are irrelevant to the issue at hand, i.e., whether this proposed SIP revision is approvable. As discussed in the notice of proposed rulemaking and below, USEPA has determined that it must disapprove the proposed SIP revision.

USEPA cannot stop processing a proposed SIP revision unless it has been formally withdrawn by the State, and Michigan has not done so. USEPA must therefore take final action on the Ford Romeo Tractor and Equipment Plant proposed SIP revision.

(2) *Ford Comment.* Nevertheless, if USEPA insists on taking action, Ford Motor Company believes the SIP revision should be approved. Ford requested an extension to the compliance dates for RACT VOC emission limits because coating suppliers needed the additional time to develop coatings to meet both Ford's coating requirements and the RACT limits. In addition, Ford requested a revision to the repair coating VOC emission limit because the coating suppliers were unable to supply coatings with a lower VOC content. Further, the repair coating usage represented a very small percentage of the overall VOC emissions from the facility. Ford believes an objective review of the extensive data submitted would support approval of the revision.

USEPA Response

USEPA provided an objective review of the material that was submitted by Michigan on May 13, 1985. As stated in the notice of proposed rulemaking, (1) Michigan failed to demonstrate that the compliance date extension is as expeditious as practicable, and (2) that no documentation was provided to demonstrate that a final repair limit of 4.8 lbs. VOC/gallon of coating is consistent with RACT or that the existing SIP limit of 3.5 lbs. of VOC/gallon for these operations is infeasible. Ford's August 18, 1988, comments contain no additional data which could be reviewed by USEPA. There is, therefore, no basis for USEPA to reconsider its position in the July 20, 1988, notice of proposed rulemaking.

Final Action

USEPA is taking final action to disapprove the revision, for the Ford Motor Company Romeo Tractor and Equipment Plant in Romeo, Michigan for the reasons stated above.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a signficant economic impact on a substantial number of small entities.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for a revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 14, 1990. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Air Pollution Control, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Dated: February 28, 1990.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 90–5898 Filed 3–14–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 94

[PR Docket No. 88–191; FCC 90–61]

Private Operational-Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* implementing new technical rules for stations operating in the 10.6 GHz and 18 GHz bands under the rules contained in part 94 of the Commission's Rules (47 CFR part 94) which defines the Private Operational-Fixed Microwave Service (OFS). Actions taken in this *Report and Order* are the adoption of new co-channel and adjacent channel assignment standards for 10.6 and 18 GHz stations, new construction requirements for stations in those bands, new allowances for low power stations in the 18 GHz band, and new criteria to determine what OFS applications are to be considered mutually exclusive. The Commission also declined to allow certain channels in the 18 GHz bands to be used for the distribution of video entertainment material. These changes are adopted to provide users of these microwave channels a more flexible regulatory framework so that additional uses of this spectrum may be promoted.

EFFECTIVE DATE: April 16, 1990.

FOR FURTHER INFORMATION CONTACT: Michael A. Lewis, Private Radio Bureau, (202) 632–6940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in PR Docket No. 88–191, adopted February 8, 1990, and released ———— 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. This proceeding was initiated to examine the rules relating to private point-to-multipoint operations in part 94 of the Commission's Rules. (Notice of Proposed Rule Making, 53 FR 23132, June 20, 1988.) Originally this proceeding addressed stations in the 2.5, 10.6, and 18 GHz bands. All issues in this proceeding that related to the 2.5 GHz band have been subsumed by a new proceeding Gen Docket No. 90–54. This *Report and Order*, therefore, only concerns stations in the 10.6 GHz and 18 GHz bands as well as certain application filing procedures that apply to all part 94 applications excluding applications for 2.5 GHz stations.

2. Point-to-multipoint stations distribute information between a centrally located nodal station and multiple outlying remote stations. The Commission had proposed to new assignment criteria for 10.6 GHz and 18 GHz applications by proposing that applications show that the nearest co-channel station is at least 35 miles removed. Most commenters agreed with this approach and the Commission concluded that this action would reduce licensing burdens on both the public and the Commission. The Commission therefore adopted a 56 kilometer (essentially 35 miles) co-channel separation requirement for point-to-multipoint stations in the 10.6 and 18 GHz bands. Affected adjacent channel stations would also need to be identified and contacted and agree to the new station before licensing can occur.

3. The Commission discussed the rules distinguishing between extended digital termination networks and limited digital terminations networks. The Commission agreed with the commenters that this distinction no longer holds any relevance to private multipoint stations. The Commission therefore removed the distinction from part 94. In doing so, the Commission also adopted a standard 18 months construction deadline for multipoint stations operating in these two bands. Finally, the Commission decided to delete the requirement for licensees in these bands to file six month construction reports because they provide the Commission with little relevant information.

4. The Commission declined to adopt its proposal to allow video entertainment material to be distributed on the 18 GHz multipoint channels. The Commission stated that allowing 6 MHz wide video on ten MHz channels would be an inefficient use of the spectrum. Further the Commission stated that the needs for video distribution of some industries is being addressed in PR Docket No. 90–5. The Commission did, however, delete the requirement that transmissions in the 10.6 GHz and 18 GHz band be digital in nature.

5. The Commission stated that licensees on the point-to-multipoint channels in the 18 GHz band could cover their intended service area with multiple low power transmitters instead of one high power transmitter. Such operations would be licensed similarly to high power operations except that low power licensees would specify a center reference coordinate and be able to locate low power transmitters anywhere within a 28 kilometer radius of that specified coordinate.

6. Finally the Commission stated that OFS applications for the same frequency in the same area would not be treated as mutually exclusive unless they were filed on the same day. This essentially, implements a first-come, first-served process for OFS applications. The Commission stated that the Communications Act of 1934 only requires that interested parties be provided thirty days from public notice of the receipt of a microwave application to file petitions to deny, not competing applications.

Regulatory Flexibility Act Initial Analysis

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act Statement

8. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

List of Subjects in 47 CFR

Part 1

Administrative practice and procedure, Radio, Reporting and recordkeeping requirements.

Part 94

Communications equipment, Private Operational-Fixed Microwave Service, Radio, Reporting and recordkeeping requirements.

Amendatory Text

Title 47 of the Code of Federal Regulations, parts 1 and 94, are amended as follows:

PART 1—[AMENDED]

9. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

10. Section 1.227 is amended by revising paragraph (b)(4) to read as follows:

§ 1.227 Consolidations.

* * * * *

(b) * * *

(4) This paragraph applies when mutually exclusive applications subject to section 309(b) of the Communications Act are filed in the Private Radio Services or when there are more such applications for initial licenses than can be accommodated on available frequencies. In such cases, the applications either will be consolidated for hearing or designated for random selection (See § 1.972). An application which is substantially amended, (as defined by § 1.962(c)), will, for the purpose of this section, be considered to be a newly filed application as of the receipt date of the amendment. Except for applications filed under part 94, Private Operational Fixed Microwave Service, mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at part 1, subpart G, of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational Fixed Microwave Service, except for applications filed for frequencies identified in § 94.65(f) of this chapter, mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day. For applications filed for frequencies identified in § 94.65(f) of this chapter, mutual exclusivity will occur if the later application(s) are received by the Commission's offices in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission.

* * * * *

PART 94—[AMENDED]

11. The authority citation for part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

12.–13. Section 94.3 is amended by removing the definitions for Extended Network and Limited Network, revising the definition for Internodal Link, and adding a definition for Nodal Station to read as follows:

§ 94.3 Definitions.

* * * * *

Internodal Link. A point-to-point communications link used to provide communications between Nodal Stations or to interconnect Nodal Stations to other communications media.

* * * * *

Nodal Station. The central or controlling station in a radio system operating on point-to-multipoint frequencies in the 2.5, 10.6, and 18 GHz bands.

* * * * *

14. Section 94.15 is amended by revising paragraph (i) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(i) Licensees and applicants for the point-to-multipoint channels in the 10.6 GHz and 18 GHz bands are not subject to the provisions of paragraph (a) through (h) of this section.

* * * * *

15. Section 94.25 is amended by removing the word [Reserved] in paragraph (e) and adding the following text to read as follows:

§ 94.25 Filing of applications.

* * * * *

(e) Applications for point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands:

(1) A separate application form must be filed for each Nodal Station except for operations consistent with § 94.88. Each Nodal Station application must specify the service area that will be served by the station in terms of a distance radius or other geographical specification, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) being served.

(2) If proposing a Digital Termination System, all applicants must submit as part of the original application a detailed plan indicating how the bandwidth requested will be utilized. In particular the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughput capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

* * * * *

16. Section 94.51 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 94.51 Time in which station must be in operation.

(a) Except as provided in paragraphs (b) and (c) of this section, a station authorized under this part must be in operation within 12 months from the date of grant or the authorization cancels automatically and must be returned to the Commission. Requests for extension may be granted upon a showing of good cause, setting forth in detail the applicant's reasons for failure to have the facility operating in the prescribed 12-month period. Such requests must be submitted no later than 30 days prior to the end of the 12-month

period to the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, Pennsylvania 17325.

(b) Stations licensed on point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands must be completely constructed and fully operational in accordance with their most recent application within 18 months of grant, or the authorizations for stations not meeting the above cancel automatically and must be returned to the Commission.

(c) Stations authorized under § 94.93 must be in operation within 36 months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

17. Section 94.61(b) is amended by revising footnote 24 to read as follows:

§ 94.61 Applicability.

* * * * *

(b) * * *

[24] Frequencies in this band are shared with the Common Carrier services for Digital Termination Systems. The available frequencies are indicated in § 94.65.

* * * * *

18. Section 94.63 is amended by revising paragraphs (a) and (b), and adding new paragraphs (d)(6) and (d)(7) to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

(a) Before filing an application for new or modified facilities under this part, the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in this service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section, unless otherwise agreed to in accordance with § 94.15(b). As an exception to the above requirement, when the proposed facilities are to be operated in the bands 6,425–6,525 MHz, 10,550–10,680 MHz, 17,700–19,700 MHz, 21,200–21,800 MHz, 22,400–23,000 MHz, or 38,600–40,000 MHz, applicants shall follow the prior coordination procedure specified in § 21.100(d) of this chapter, however, certain frequencies in the 10,550–10,680 MHz and the 17,700–19,700 MHz bands shall instead abide by the criteria specified in § 94.63(d)(6). In addition, when the proposed facilities are to be operated in the 2655–2690 or 12,500–12,700 MHz bands, applicants shall also follow the procedures in § 21.706(c) and (d) of this chapter and the technical standards and requirement of part 25 of this chapter as regards to licensees in the Communication-Satellite Service. See also § 94.77.

(b) The interference protection criteria for operational-fixed stations, other than those licensed on frequencies set out in §§ 94.65(a)(1), 94.65(i)(1), 94.65(j)(8), 94.90, and 94.91 are as follows:

* * * * *

(d) * * *

* * * * *

(6) Each application for new or modified nodal station on channels numbered 4A, 4B, 7, 9, and 19/20 in the 10.6 GHz band and all point-to-multipoint channels in the 18 GHz band shall demonstrate that all existing co-channel stations are at least 56 kilometers from the proposed nodal station site. Applicants for these channels must certify that all licensees and applicants for stations on the adjacent channels within 56 kilometers of the proposed nodal station have been notified of the proposed station and do not object. Alternatively, or if one of the affected adjacent channel interests does object, the applicant may show that all affected adjacent channel parties are provided a C/I protection ratio of 0 dB. An applicants proposing to operate at an AAT greater than 91 meters must reduce its EIRP in accordance with the following table; however, in no case shall EIRP exceed 70 dBm on the 10.6 GHz channels.

	EIRP
AAT (in meters): dBm	
Above 300	+38
251 to 300	41
201 to 250	43
151 to 200	49
101 to 150	55
100 and below	85

(7) Each application for new or modified nodal station on channels numbered 21, 22, 23, and 24 in the 10.6 GHz band shall include an analysis of the potential for harmful interference to all other licensed and previously applied for co-channel and adjacent channel station located within 80 kilometers of the location of the proposed station. The criteria contained in § 94.63(d)(3) shall be used in this analysis. Applicants must certify that copies of this analysis have been served on all parties which might reasonably be expected to receive interference above the levels set out in § 94.63(d)(3) within 5 days of the date the subject application is filed with the Commission.

* * * * *

19. Section 94.65 is amended by revising paragraph (i), the introductory text of paragraph (j) and adding paragraph (j)(8) to read as follows:

§ 94.65 Frequencies.

* * * * *

(i) 10,550–10,680 MHz. (1) The following frequencies are available for point-to-multipoint digital terminations systems:

Channel No.	Nodal station	User station
	Frequency band limits (MHz)	Frequency band limits (MHz)
4A	10,580.0–10,582.5	10,645.0–10,647.5
4B	10,582.5–10,585.0	10,647.5–10,650.0
19	10,585.0–10,587.5	10,650.0–10,652.5
20	10,587.5–10,590.0	10,652.5–10,655.0
21	10,590.0–10,592.5	10,655.0–10,675.5
22	10,592.5–10,595.0	10,657.5–10,660.0
23	10,595.0–10,597.5	10,660.0–10,662.5
24	10,597.5–10,600.0	10,662.5–10,665.0
7	10,605.0–10,607.5	10,670.0–10,672.5
9	10,610.0–10,612.5	10,675.0–10,677.5

(i) Each station will be limited to one frequency pair per SMSA. An additional channel pair may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. The channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair may be assigned to more than one licensee in the same SMSA or service area as long as the interference protection criteria of § 94.63 are met.

(2) The following frequencies are available for point-to-point operations:

(i) 2.5 MHz bandwidth.

Transmit (receive) MHz	Receive (transmit) MHz
10,551.25	10,616.25 10,553.75 10,618.75
10,556.25	10,621.25 10,558.75 10,623.75

(ii) 1.25 MHz bandwidth.

Transmit (receive) MHz	Receive (transmit) MHz
10,560.625	10,625.625 10,561.875 10,626.875
10,563.125	10,628.125 10,564.375 10,629.375

(j) 17700–19700 MHz

Note.—Stations authorized as of September 9, 1983 to use frequencies in this band may, upon proper application, continue to be authorized for such operations.

* * * * *

(8) The following frequencies are available for point-to-multipoint systems:

Channel No.	Nodal station	User station
	Frequency band (MHz) limits	Frequency band (MHz) limits
25	18,820–18,830	19,160–19,170
26	18,830–18,840	19,170–19,180
27	18,840–18,850	19,180–19,190
28	18,850–18,860	19,190–19,200
29	18,860–18,870	19,200–19,210

(i) Each station will be limited to one frequency pair per SMSA. Additional channel pairs may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. A channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 94.63 are met.

* * * * *

20. Section 94.73 is amended by revising footnote 6 to read as follows:

§ 94.73 Power limitations.

(a) * * *

[6] The output power of a Digital Termination System nodal transmitter shall not exceed 0.5 watts per 250 kHz. The output power of a Digital Termination System user transmitter shall not exceed 0.04 watts per 250 kHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input port. The operating power shall not exceed the authorized power by more than 10 percent of the authorized power in watts at any time.

* * * * *

21. Section 94.75 is amended by revising footnote 3 in the table to paragraph (b) and adding a new paragraph (h):

§ 94.75 Antenna limitations.

* * * * *

(b) * * *

[3] Except as provided for in paragraph (h) of this section.

* * * * *

(h) Antenna standards for point-to-multipoint channels in the 10.6 GHz and 18 GHz bands excluding operations under § 94.88.

(1) Nodal transmitting antennas may be omnidirectional or directional, consistent with coverage and interference requirements.

(2) The use of horizontal or vertical plane wave polarization, or right hand or left hand rotating elliptical polarization must be used to minimize harmful interference between stations.

(3) Directive antennas shall be used at all user stations and shall be elevated no higher than necessary to assure adequate service. The user station antennas shall meet the performance standards as specified in § 21.208(c) of this chapter and have a minimum power gain of 34 dBi in the 10,550–10,680 MHz band and 38 dBi in the 17,700–19,700 MHz band. User antenna heights shall not exceed the height criteria of part 17 of this chapter, unless authorization for use of a specific maximum antenna height (above ground and above sea level) for each location has been obtained from the Commission prior to the erection of the antenna. Requests for such authorization shall show the inclusive dates of the proposed operation. (See part 17 of this chapter concerning the construction, marking and lighting of antenna structures).

22. A new § 94.88 is added to read as follows:

§ 94.88 Special provision for low power systems in the 17,700–19,700 MHz band.

Notwithstanding other provisions in this rule part, licensees of the five point-to-multipoint channel pairs listed in § 94.65(j)(8) may operate multiple low power transmitting devices within a defined service area. The service area will be a 28 kilometer omnidirectional radius originating from specified center reference coordinates. The specified center coordinates must be no closer than 56 kilometers from any co-channel nodal station or the specified center coordinates of another co-channel system. Applicants/licensees do not need to specify the location of each individual transmitting device operating within their defined service areas. Such operations are subject to the following requirements on the low power transmitting devices:

(a) Power must not exceed one watt EIRP and 100 milliwatts transmitter output power.

(b) A frequency tolerance of .001% must be maintained.

(c) The mean power of emissions shall be attenuated in accordance with the following schedule: In any 4 kHz band, the center frequency of which is removed from the frequency of the center of the DTS channel by more than 50 percent of the DTS channel bandwidth up to and including 50 percent plus 500 kHz: as specified by the following equation but in no event be less than $50+10 \log_{10} N$ decibles.

$A=35+.003(F-0.5B)$ Db

Where

A = Attenuation (in decibles) below output power level contained within the DTS channel for a given polarization.

B = Bandwidth of DTS channel kHz.

F = Absolute value of the difference between the center frequency of the 4 kHz band measured at the center frequency of the DTS channel in kHz.

N = Number of active subchannels of the given polarization within the DTS channel.

§§ 94.181–94.199 Subpart F [Removed]

23. Part 94 is amended by removing subpart F in its entirety.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–5896 Filed 3–14–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AB21

Conferring Designated Port Status on Portland, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service confers designated port status on Portland, Oregon pursuant to section 9(f) of the Endangered Species Act of 1973. The direct importation and exportation of fish and wildlife, including parts and products, will now be permitted through Portland, Oregon. 50 CFR 14.12 is amended to add Portland, Oregon to the list of Customs ports of entry designated for the importation and exportation of wildlife. A public hearing on this proposal was held on April 17, 1989, in the Regional Office of the Fish and Wildlife Service, Portland, Oregon.

EFFECTIVE DATE: This rule is effective on March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Special Agent David L. McMullen, Assistant Regional Director, U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon 97232–4181, (503) 231–6125, FTS 429–6125.

SUPPLEMENTARY INFORMATION:

Background

Designated ports are the cornerstones of the process by which the Fish and Wildlife Service regulates the importation and exportation of wildlife in the United States. With limited exceptions, all fish or wildlife must be imported and exported through such ports as required by section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f). The Secretary of the Interior is responsible for designating

these ports by regulation, with the approval of the Secretary of the Treasury after notice and the opportunity for public hearing.

On January 4, 1974, the Service promulgated final rules designating eight Customs ports of entry for the importation and exportation of wildlife (39 FR 1158). A ninth port was added on September 1, 1981, when final rules were published naming Dallas/Forth Worth, Texas a designated port (46 FR 43834). On March 23, 1989, the Service published a proposed rule to confer designated port status on Portland, Oregon (54 FR 11975) and scheduled a public hearing on the matter.

Need for Rulemaking

Containerized air and ocean cargo has become the paramount means by which both live wildlife and wildlife products are transported into and out of the United States. The use of containerized cargo by the airline and shipping industries has compounded the problems encountered by the Service and by wildlife importers and exporters in the Portland area. In many instances, foreign suppliers will containerize entire shipments and route them directly to Portland. If, upon arrival, the shipment contains any wildlife, those items must be shipped under Customs bond to a designated port for clearance. In most cases, this has involved shipping wildlife products to Seattle, Washington, the nearest designated port, but reshipment has been both time consuming and expensive. To alleviate this problem, Portland area importers and exporters have attempted to direct entire shipments, even though they contain only a small number of wildlife items, to a designated port prior to their arrival at Portland. This method of shipment meets the current regulatory requirements of the Service; however, it is again time consuming and entails additional expense. It is also counter to the increasing tendency of foreign suppliers to ship consignments directly to regional ports such as Portland. In addition, time is a key element when transporting live wildlife and perishable wildlife products. Without designated port status, businesses in Portland cannot import and export wildlife products directly, and consequently may be unable to compete economically with merchants in other international trading centers located in designated ports.

With airborne and maritime shipments into and out of Portland steadily increasing, the Service has concluded that the port should be designated for wildlife imports and exports. Conferring this status on Portland will serve not only the interests of businesses in the region, but will also facilitate the mission of the Service in two ways. First, clearance of wildlife shipments in Portland will relieve inspectors at the port of Seattle, who are now handling cargo for both ports. Second, with the development of the Service's National Wildlife Forensics Laboratory in Ashland, Oregon, shipments of wildlife products into and out of Oregon are expected to increase dramatically as the laboratory becomes operational and begins to handle evidence from a variety of sources.

Results of Public Hearing and Written Comments

Section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f)(1), requires that the public be given an opportunity to comment at a hearing prior to the Secretary of the Interior conferring designated port status on any port.

Accordingly, the Service held a public hearing on the proposed rule on April 17, 1989, from 9:00 AM to 12:00 Noon. The hearing was held in the Regional Office, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, 16th Floor, Portland, Oregon. Five persons presented oral and written testimony at the hearing, representing Congressman Aucoin, Delta Airlines, two customs brokerage firms, and the Port of Portland. All testified in favor of designated port status for Portland. The Executive Director of the Port of Portland testified that marine container traffic increased 17 percent from 1987 to 1988, and that the Portland International Airport has experienced a 120-percent growth in air freight since 1983. Both customs brokers who testified said that their clients were importing an increasing volume of wildlife products and had been hampered by having to clear shipments at Seattle or San Francisco.

Eight written comments on the proposed rule were received during the public comment period. Again, all commenters favored designated port status for Portland. Those who commented indicated their businesses would benefit if they were able to import wildlife products at Portland. Delta Airlines mentioned that their expansion plans call for increased international air cargo service to Portland from Pacific rim locations.

Need for Immediate Effective Date of Final Rule

The Service has been making preparations to implement this rule, including the stationing of a wildlife inspector staff at the Port of Portland. Approval of the final rule has been delayed for almost one year. Businesses in the Portland area that expected to be able to use the port have been disadvantaged. Immediate effectiveness of the rule is necessary so that the Service can begin clearing shipments through the port promptly on publication of the final rule, in order to avoid further hardship on the businesses involved.

Note: The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The only effect of this rule will be to make it easier for businesses to import and export wildlife directly through Portland, Oregon. This rule does not contain any information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These changes in the regulations in part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 DM 6, Appendix 1, Sections 1.4(A)(1) and 1.5.

Author

The primary author of this rule is Senior Special Agent Michael Sutton, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 14

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is amended as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 is revised to read as follows:

Authority: 18 U.S.C. 42; 16 U.S.C. 3371–3378; 16 U.S.C. 1538 (d)–(f), 1540(f); 16 U.S.C. 1382; 16 U.S.C. 704, 712; 31 U.S.C. 483(a); 16 U.S.C. 4223–4244.

§ 14.12 [Amended]

2. Section 14.12(h) is amended by removing the word "and".

3. Section 14.12(i) is amended by removing the period and adding the word "and" preceded by a semicolon.

4. Section 14.12 is amended by adding the following new paragraph (j):

§ 14.12 Designated ports.

* * * * *

(j) Portland, Oregon.

Dated: January 23, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90–5936 Filed 3–14–90; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 55, No. 51
Thursday, March 15, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Belt Entry Review; Public Hearing

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public hearing to receive public comment on the Agency's report regarding belt conveyor entry ventilation in underground coal mines. The hearing will be held in Washington, DC and address issues raised by the report that relate to MSHA's proposed revisions to ventilation standards for underground coal mines.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to the hearing date. The order of appearance will be determined by the Agency prior to the hearing. Immediately before the hearing, any unalloted time will be made available to persons making late requests. The public hearing will be held on Tuesday, April 17, 1990 beginning at 9:00 a.m.

ADDRESSES: The hearing will be held in Washington, DC, in the Main Auditorium, Frances Perkins Department of Labor Building, Third and Constitution Avenue, NW.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203 or telephone the Office of Standards at (703) 235–1910

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On August 25, 1989, MSHA published a notice of availability of an Agency report of findings and recommendations regarding belt conveyor entry ventilation (54 FR 35356). MSHA requested comment on findings and conclusions in the report that relate to the Agency's ongoing rulemaking to revise safety standards for ventilation of underground coal mines (53 FR 2382).

The original comment period on the report was scheduled to close on September 25, 1989. However, due to requests from the mining community, MSHA extended the comment period to November 27, 1989 and subsequently to February 9, 1990. In the comments on the report, MSHA received a request for a public hearing.

The purpose of the public hearing is to receive relevant comments about the report's recommendations as they relate to the ventilation rulemaking. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official will exercise discretion to exclude irrelevant or unduly repetitious material and questions.

The session will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to respond to relevant questions and ask questions of those parties making presentations. Speakers will be limited to a maximum of 20 minutes for their presentations. A verbatim transcript of the proceeding will be taken and made a part of the ventilation rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until May 4, 1990.

Issues

MSHA's belt entry review report concluded that directing belt entry air to the working face provides protection equivalent to other ventilation methods which comply with existing 30 CFR 75.326 provided that a carbon monoxide (CO) or other improved monitoring system is used. While some commenters agreed with this conclusion, others disagreed. Those who disagreed stated that additional research and data are needed to determine if this is a safe method of ventilating conveyor belt entries. In addition, some commenters expressed concern that belt air at the face could raise respirable dust levels.

MSHA is holding the public hearing to allow further comment on the findings and conclusions in the report which directly relate to the ventilation proposal. The relevant areas addressed by the report are: (1) Protection of the intake escapeway from leakage from adjacent air courses; (2) belt entry ventilation where air from the belt entry would be used to ventilate working places; (3) protection of the intake escapeway from fire sources in the escapeway; (4) smoke sensors; and 5) air velocities in belt entries.

At this time, research findings and the Agency field experience indicate that use of air in belt entries at working places may require fruther precautions than those included in the January 27, 1988 proposed rule. These further precautions would be:

(1) Requiring monitoring system sensors to be spaced at intervals no greater than every 1,000 feet in belt entries;

(2) Requiring lower monitoring system alert and alarm levels (for example, 5 ppm for alert, 10 ppm for alarm above ambient) where air quantities in belt entries exceed a specified limit (the report states that warning times can be improved by reducing alert and alram levels when the quantity of air used to ventilate belt entries exceeds 24,000 cubic feet per minute);

(3) Requiring smoke sensors to be installed at each belt drive, when such sensors become commercially available; and

(4) Requiring mines to be designed to improve the integrity of intake escapeways from contamination by fires in adjacent entries. Such design requirements could involve location of entries, number of entries or use of pressure differentials and could be addressed in mine plans.

MSHA will limit testimony at the public hearing to the areas in the belt entry review report that relate to the Agency's proposed ventilation standards.

Dated: March 9, 1990.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 90–5986 Filed 3–14–90; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 838

Air Force Systems Command Contractor Performance Assessment

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed part sets policy, assigns responsibilities, and provides implementing procedures for systematically assessing contractor performance on current contracts. The Contractor Performance Assessment System (CPARS), published in the **Federal Register** August 11, 1988, 53 FR 30255, currently assesses contractor performance on selected AFSC systems contracts for use in future contract award decisions. The assessments are prepared by AFSC program managers/directors and forwarded to the contractors for review and comment. The response to the existing CPARS has been positive, and AFSC desires to expand the use of the system and increase its data base to include service contracts. This revision to the regulation will expand the use of the CPARS to capture performance assessments on all AFSC systems contracts greater than $5 million and all AFSC service contracts greater than $5 million annually. In addition, this revision will implement various improvements to the CPARS which have been identified as a result of the first year and a half of use.

DATES: Comments must be submitted on or before April 16, 1990.

ADDRESSES: HQ AFSC/PKCP, Andrews AFB DC 20334–5000.

FOR FURTHER INFORMATION CONTACT: Ms Diana Hoag, telephone (301) 981–4022.

SUPPLEMENTARY INFORMATION: The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act (5 U.S.C. 601–611), does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act (44 U.S.C. chapter 35), and does not require an environmental impact statement under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). This proposed regulation will be reviewed by the Deputy Assistant Secretary of Defense (Procurement) prior to implementation.

The CPAR focal points and copies of AFSC Forms 125 and 125A can be obtained from Ms. Diana Hoag at the address shown above.

List of Subjects in 32 CFR Part 838

Government contracts.

Therefore, the Air Force proposes to amend 32 CFR part 838 by revising it to read as follows:

PART 838—AIR FORCE SYSTEMS COMMAND CONTRACTOR PERFORMANCE ASSESSMENT

Sec.

Authority: 10 U.S.C. 2305(a)(3).

Note: Air Force Regulations are available through the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

This part is derived from Air Force Systems Command Regulation 800–54, Contractor Performance Assessment.

§ 838.0 Purpose.

This part sets policy, assigns responsibilities, and provides procedures for systematically assessing contractor performance on current systems acquisition or service contracts. General information applicable to both types of contract effort is referred to as pertaining to "CPAR," "CPARs," or "CPAR System." Specific information regarding systems or service assessments is annotated as "CPAR (Systems)" or "CPAR (Service)." References to the "program director or manager" are intended to apply to the contract monitor in the case of a service contract. This part does not apply to the Air National Guard or to US Air Force Reserve units and members.

Subpart A—Air Force Systems Command Policy

§ 838.1 Purpose of Contractor Performance Assessment Reporting System (CPARS) and its two reports.

AFSC Form 125, Contractor Performance Assessment Report—CPAR (Systems), and AFSC Form 125A, Contractor Performance Assessment Report—CPAR (Service).

(a) The sole purpose of the CPAR System is to provide program management input for a command-wide performance data base for use in AFSC source selections (AFRs 70–15 and 70–30 discuss source selection policy and procedures). Performance assessments will be used as an aid in awarding contracts to contractors that consistently produce quality products that conform to requirements within contract schedule and cost. The CPAR can be used to effectively communicate contractor strengths and weaknesses to source selection officials. The CPAR will not be used for any purpose other than as stated in this paragraph.

(b) The CPAR System assesses a contractor's positive and negative performance on a given contract during a specific period of time. Each assessment must be based on objective facts and be supportable by program and contract management data, such as cost performance reports, technical interchange meetings, financial solvency assessments, production management reviews, contractor operations reviews, functional performance evaluations and earned contract incentives. Subjective assessments concerning the causes or ramifications of the contractor's performance should be provided; however, speculation or conjecture should not be included.

(c) The CPAR assessment process is designed with a series of checks and balances to facilitate the objective and consistent evaluation of contractor performance. Both government and contractor program management perspectives are captured on the form. The assessment is reviewed by a level of management above the program director or manager to ensure consistency with other evaluations throughout the activity as well as other program assessments.

(d) The nature of the effort to be acquired will determine whether a CPAR (Systems) or CPAR (Service) is appropriate. If a given contract contains

a mixture of the type of effort normally covered by a CPAR (Systems) and the effort normally assessed with a CPAR (Service) then the acquisition activity will select the most appropriate form based upon the preponderance of the contract dollar value. The activity may also elect to complete both forms on the same contract.

§ 838.2 Applicability and scope of the CPAR (Systems).

(a) The CPAR (Systems) must be completed for contracts for concept demonstration and validation, full-scale development (FSD), or full-rate production and deployment efforts over $5 million (face value). When a single contract instrument requires segregation of costs for combining FSD and production efforts or containing multiple productions lots, an individual CPAR may be completed for each segment of work. Laboratory (science and technology programs) are not included in the scope of this part. However, a CPAR (Systems) may be completed on a research and development project funded by 6.3B or 6.4 funds at the laboratory commander's discretion. When this is to occur, the contractor will be notified of the laboratory commander's decision no later than the time of contract award.

(b) Broadening the application of CPAR (Systems) by a local activity to additional contract efforts requires AFSC/CV approval before implementation.

§ 838.3 Applicability and scope of the CPAR (Service).

The CPAR (Service) is intended for use in assessing performance on manpower support contracts. For purposes of this part, this term should be construed broadly and include contracts of various types which provide support to the acquisition activity mission in terms of time, expertise, analysis or management support. Examples of such contracts include, but are not limited to, range operations, scientific and technical assistance, and operations and maintenance contracts. CPAR (Service) is not intended for use on base service contracts. Contracts may or may not require deliverable reports, models or software. A CPAR (Service) must be completed on all such contracts valued over $5 million annually (including total value of all potential task orders). CPARs (Service) may be completed on manpower support contracts of lesser value at the discretion of the field activity commander or designee, if such a determination is made as a part of the activity's written policy. A determination to use a CPAR (Service) on an individual contract valued below $5 million annually must be made, signed, and communicated to the contractor no later than time of contract award.

Subpart B—Responsibilities Assigned

§ 838.4 HQ AFSC responsibilities.

Deputy Chief of Staff, Requirements (HQ AFSC/XR) ensures that the overall management and control of the CPAR System is consistent with this part. Formulating and updating this part is a joint responsibility of HQ AFSC/XR and Deputy Chief of Staff, Contracting (HQ AFSC/PK).

§ 838.5 Field activity responsibilities.

The commander or vice commander of each of the involved field activities:

(a) Establishes procedures to implement this part. Submit one copy of local supplements to this part to HQ AFSC/PK for approval prior to implementation.

(b) Establishes a CPAR System focal point. This focal point is responsible for the collection, control, storage, and distribution of CPARs prepared at the field activity.

(c) Ensures timely completion of CPARs by program directors or managers.

(d) Ensures timely review of CPARs by local reviewing officials.

Subpart C—CPAR Procedures

§ 838.6 Frequency of reporting.

(a) An initial CPAR is required for new contracts meeting the criteria of § 838.2 or § 838.3. The initial CPAR must reflect evaluation of at least the first 180 days of performance under the contract, and may include up to the first 365 days of performance. The initial CPAR is to be completed and distributed no later than 90 days after completion of the evaluation period.

(b) Intermediate CPARs are required every twelve (12) months throughout the entire period of performance of the contract. Activities may, through local policy, establish a specific submittal date for their intermediate CPARs, provided they are completed for every twelve month evaluation period. Or, in the absence of local policy, individual intermediate CPARs are to be completed and entered in the CPAR library not later than 90 days after the end of the twelve-month evaluation period. More frequent reporting is required when the program director or manager is aware of a change in performance that significantly alters the assessment of the contractor. Contractors may also request that the CPAR be updated by the program office if a significant change in performance has occurred. When a change in program director or manager is to occur, the departing program director or manager shall complete an updated CPAR prior to departure. Generally, no more than two CPARs a year should be prepared. An intermediate CPAR is limited to contractor performance occurring after the preceding CPAR. To improve efficiency in preparing the CPAR, it is recommended that the CPAR be completed together with other reviews (for example, award fee determinations, major program events, or program milestones).

(c) A final CPAR will be completed upon contract termination, or within 6 months following the delivery of the final major end item on contract or completion of the period of performance. The final CPAR is limited to contractor performance occurring after the preceding CPAR.

§ 838.7 CPAR processing.

Each CPAR is completed, reviewed, coordinated, and approved with AFSC. Contractor organizations will be given an opportunity to review and comment on the program director's or manager's preliminary assessment. The CPAR review and approval process is as follows:

(a) For CPAR (Systems), the project manager or engineer responsible for the contract being reviewed prepares the preliminary documentation and assessment in coordination with the project team. This assessment should be based on multifunctional input. For CPAR (Service), the contract monitor prepares the form based upon inputs received from task or individual activity monitors. The contract monitor may use the CPAR (Service) form or some other vehicle to obtain the inputs. Guidance on how to integrate these potentially diverse inputs is provided in § 838.11.

(b) Support contractors, such as Systems Engineering and Technical Assistance or Federal Contract Research Center contractors, may provide input as project team members but are not allowed access to completed CPARs unless specifically authorized in support of a source selection. The project manager or engineer must ensure that all CPAR documentation and forms are marked "For Official Use Only/ Source Selection Sensitive" according to AFT 12–30 and AFT 70–15, chapter 4.

(c) The program director or manager responsible for the overall program reviews, signs, and transmits the preliminary CPAR to the contractor. Program director or manager narrative

remarks are limited to item 16 plus one additional single-spaced typewritten page. In rare circumstances, such as a rating containing several red or blue scores, the item 16 remarks may be extended to the form itself plus two additional single-spaced typewritten pages. The CPAR reviewing official must approve each request to expand the item 16 remarks beyond one additional page. Also, the contractor must be allowed the same amount of additional space for his comments. In order to ensure that the contractor receives the CPAR, the preferred method of transmitting it is by physically handing the document to a representative of the contractor, possibly in conjunction with face-to-face discussions as described in paragraph (d) of this section. If this is not possible, transmittal via certified mail is acceptable.

(d) The program director or manager will retain a copy of the preliminary CPAR and transmit the original to his or her counterpart within the contractor's organization. Face-to-face meetings with contractor management to discuss preliminary CPAR ratings are strongly recommended. The transmittal letter must provide the following guidance to the contractor:

(1) Protect the preliminary CPAR as a source selection sensitive document.

(2) Strictly control access to the preliminary CPAR within the contractor organization.

(3) Do not release the preliminary CPAR to persons or entities outside contractor control. CPAR data is not to be used for advertising, promotional material, preaward surveys, proposal submittals, production readiness reviews, or other similar purposes.

(4) One of two responses is required, within 30 days of the date of the transmittal letter. If no comments are to be provided, acknowledge receipt of the CPAR by signing item 19 of the form and return it to the originating office. If the form is not returned within the allotted 30 days, the program director or manager will annotate on the retained copy of the CPAR that the contractor had no comment, and continue processing the CPAR.

(5) If contractor comments are to be provided, they are limited to item 18 plus one additional single-spaced typewritten page (however, see paragraph (i) of this section.). This page limit will be strictly enforced. Additional pages will not be reviewed or included in the CPAR data base. The comments, including the CPAR form signed by contractor in item 19, are to be returned to the originating office. Contractor comments received after the 30 day response period may not be included in the final CPAR.

(6) Focus comments on the objective portion of the program director's or manager's narrative and provide views on causes and ramifications of the assessed performance.

(e) After receiving and reviewing the contractor comments, the program director or manager may revise the preliminary assessment. Revised assessments must be recorded on a new CPAR form that will be attached to the original. Complete items 1 through 5 and mark item 12 "revision to CPAR for period (insert period covered by report)." Indicate revised ratings in items 14 or 15 and explain the reasons for the changes made in item 16.

(f) After reviewing contractor comments or 30 days from the date of the transmittal letter to the contractor, whichever occurs first, the program director or manager will send the CPAR to the activity reviewing official for review and signature according to local procedures. If the CPAR is not returned by the contractor within 30 days, the program director or manager will annotate item 18 as follows: "The contractor had no comment in response to this assessment." The activity reviewing official must be at least one level above the program director or manager and be a general officer, a member of the Senior Executive Service or the activity commander or vice commander.

(g) After the CPAR is completed, the program director or manager will send the CPAR and all attachments to the CPAR focal point for input into the appropriate CPAR library. No copies of the final CPAR will remain on file at the program office. Working papers associated with CPAR evaluations may be retained but must be protected "For Official Use Only/Source Selection Sensitive."

(h) All records created under this part will be retained and disposed of according to AFR 12–50.

§ 838.8 CPAR focal points.

(a) Each field activity CPAR focal point will keep original CPARs and all attachments in separate files for each contractor. Each corporate file will contain separate files for divisions and subsidiaries. Each CPAR will be retained for 5 years, unless the program director or manager requests a longer retention period. For example, a long development program may necessitate longer retention to reflect contractor performance on the entire program.

(b) Two separate libraries will be maintained, one for CPAR (Service) forms and one for CPAR (Systems) forms. The CPARs focal point at the originating location will be responsible for ensuring that distribution of completed CPARs is made to the locations within the Command which maintain the applicable libraries. CPARS focal points at locations which maintain both libraries shall be responsible for ensuring that CPARs are filed in the appropriate library at their location.

(c) Distribution of CPARs within AFSC will only be made from one field activity CPAR focal point to another. Source selection team members must contact their local CPAR focal point for all appropriate CPARs.

(d) HQ AFSC/PK is the command focal point for processing CPAR requests from government activities outside the command. All such requests received by field activities are to be forwarded to HQ AFSC/PKP without action.

§ 838.9 CPAR markings and protection.

All CPAR forms and attachments will be marked "For Official Use Only/ Source Selection Sensitive." In addition, CPARs data are to be marked and handled as "Source Selection Information" in accordance with FAR 3.104. CPARs have the unique characteristic of always being predecisional in nature. They will always be source selection sensitive/ information because they will be in constant use to support ongoing source selections. This predecisional nature of the CPARs is a basis for requiring that the CPARs data base be protected from unauthorized disclosure to personnel or entities outside the source selection process. It must be noted, however, that CPARs may also contain information that is proprietary to the contractor that is the subject of the report. Information contained on the CPARs such as trade secrets and confidential commercial or financial data, obtained from the contractor in confidence, must be protected from unauthorized disclosure. Additionally, CPARs may contain valuable government generated commercial information that will be used in the award of government contracts. Such commercially valuable government-generated information must be protected from unauthorized disclosure. Based on the confidential nature of the CPAR system, the following guidance applies to protection both internal and external to the government.

(a) Internal government protection. CPARs must be treated as source selection sensitive/source selection information at all times. The flow of

CPARs throughout AFSC in support of source selections will be controlled by the CPAR focal points and transmitted only from one year focal point to another (see AFSC Sup 1 to AFR 70–15, AFSC Sup 1 to AFR 70–30). Outside of use in an instant source selection, information contained on the CPARs must be protected in the same manner as information contained in completed source selection files (see AFRs 70–15 and 70–30). Information contained on the CPAR may not be used to support preaward surveys, debarment proceedings or any other internal government reviews.

(b) External government protection. Due to the sensitive and confidential nature of the CPARs, disclosure of CPAR data to contractors or others outside the government is not authorized. An exception to this rule is for the contractor that is the subject of the CPAR. In this situation, access to review the completed CPAR will be granted by the CPAR focal point if the contractor personnel requesting access have a letter signed by their corporate chief executive officer (CEO) or authorized designee (for example, general manager or division vice-president) granting disclosure to that individual. When the CEO has designated other corporate approval officials, both the CEO designation letter and CPAR access letter signed by the CEO designee must be presented to the CPAR focal point. Copies of the final CPAR are not allowed to be made or retained by the contractor's representative. Such limited and controlled access by the contractor's representative will not inhibit candid agency decision making. This access is needed to ensure the accuracy of changes made to the CPAR after the contractor's initial review.

Note: During the source selection discussion process, the contractor will be notified of relevant past performance data, derived from a CPAR or other sources, that requires clarification or could lead to a negative rating. See AFSC Sup 1 to AFR 70–15 and AFSC Sup 1 to AFR 70–30.)

On those rare occasions when a Freedom of Information Act (FOIA) request is received from CPAR release, process the request through FOIA channels to HQ AFSC/IMQDI for review and consideration by HQ AFSC/PK.

§ 838.10 Instructions for completing AFSC Form 125, Contractor Performance Assessment Report—CPAR (Systems).

Type all information on the form. No handwritten CPARs will be accepted by the CPAR focal points for inclusion into the AFSC library.

(a) *Item 1:* State the name and address of the division or subsidiary of the contractor performing the contract. Identify the parent corporation (no address required). Identify the contractor Department of Defense Activity Address Directory code.

(b) *Item 2:* Indicate whether, in accordance with § 838.6 of this part, the CPAR is an initial, intermediate or final report.

(c) *Item 3:* State what period is covered by the instant report. In no instance should a CPAR period of evaluation include previously reported effort (i.e., CPARs are not cumulative or overlapping).

(d) *Item 4–6:* Contract number, product division and location of contract performance.

(e) *Item 7:* State current contract period of performance including any authorized extensions, such as exercised options.

(f) *Item 8.* State the current percent complete of the contract. If cost performance reports (CPR) or cost/schedule status reports (C/SSR) data is available, calculate percent complete by dividing cumulative budgeted cost of work performed (BCWP) by contract budget base (CBB) (less management reserve) and multiplying by 100. CBB is the sum of negotiated cost plus estimated cost of authorized undefinitized work. If CPR or CSSR data is not available, estimate percent complete by dividing the number of months elapsed by total number of months in contract period of performance and multiplying by 100.

(g) *Item 9.* State the current face value of contract. For incentive contracts, state target value.

(h) *Item 10.* Identify the basis of award. Check the appropriate box.

(i) *Item 11.* Identify the contract type. For mixed contract types, check the predominate contract type and identify the other contract type in the "mixed."

(j) *Item 12.* Provide a short descriptive narrative of the program. Spell out all abbreviations. Identify overall program phase and production lot (for example, concept development, full-scale development, low-rate initial production, or full-rate production (lot 2)). For major weapon systems, identify DODD 5000.1 milestone phases.

(k) *Item 13.* Provide a short description of the contract effort that identifies key technologies, components, subsystems, and requirements. This section is of critical importance to future Performance Risk Analysis Groups (PRAGs) to allow them to determine the relevancy of the contract being reviewed to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. For intermediate CPARs, a brief description of key milestone events that occurred in the review period may be beneficial (e.g., CDR, FCA, etc.).

(l) *Item 14.* Evaluation areas. In preparing the CPAR, the program director or manager should strive for consistency between the ratings used for the areas of evaluation on this form and the similar areas used for the program director assessment report (PDAR), or program manager assessment report (PMAR). The major difference is the CPAR assesses a contractor's performance on an individual contract while the PDAR and PMAR assess the overall program. A blue rating has been added to denote exceptional performance which is not found in the other assessments. This new rating is added because recognition of exceptional ability is important in the source selection process. Paragraph (m) of this section explains the evaluation colors.

(1) Each area assessment must be based on objective data that will be provided in item 16. Facts to support specific areas of evaluation should be obtained from the government specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example, be from engineering, contracting, contract administration, manufacturing, quality, and logistics.

(2) The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. For example, if a contractor met an extremely tight schedule, a blue (exceptional) assessment may be given in recognition of the inherent schedule risk.

(3) The CPAR is designed to assess prime contractor performance. However, in those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in item 16.

(4) Many of the evaluation areas in item 14 represent groupings of diverse elements. The program director or manager should consider each element and use the area rating to highlight significant issues. For example, product assurance (item 14d) could be rated marginal if quality is a problem even though other elements within the product assurance definition were satisfactory.

(m) Evaluation colors—(1) *Blue (Exceptional).* Indicates performance clearly exceeds contractual requirements. The area of evaluation contains few minor problems for which corrective actions appear highly effective. In the cost performance area, blue indicates a positive cost variance.

(2) *Green (Satisfactory).* Indicates performance clearly meets contractual requirements. The area of evaluation contains some minor problems for which the corrective actions appear satisfactory. In the cost performance area, green indicates no cost variance or a negative cost variance greater than zero but less than or equal to 5 percent.

(3) *Yellow (Marginal).* Indicates performance meets contractual requirements. The area of evaluation contains a serious problem for which corrective actions have not yet been identified, appear only marginally effective, or have not been fully implemented. In the cost performance area, yellow indicates a negative cost variance greater than 5 percent but less than or equal to 15 percent.

(4) *Red (Satisfactory).* Indicates the contractor is in danger of not being able to satisfy contractual requirements and recovery is not likely in a timely manner. The area of evaluation contains serious problems for which the corrective actions appear ineffective. In the cost performance area, red indicates a negative cost variance greater than 15 percent.

Note 1. Upward or downward arrows may be used to indicate an improving or worsening trend insufficient to change the assessment status.

Note 2. N/A means not applicable.

(n) *Item 14a.* Product/system performance. This item must be scored separately. Evaluate the extent to which the contractor is meeting overall product or system performance in terms of the contract requirements, including but not limited to the statement of work, specifications, contract data requirement lists, and significant special contract clauses.

(o) *Item 14a(1).* Systems engineering. Evaluate: the contractor's effort to define the system performance parameters and system configuration to satisfy the requirements; the planning and control of technical program tasks; the quality and adequacy of the engineering support provided throughout all phases of contract execution; the integration of the engineering specialties; and the management of a totally integrated effort of all engineering concerns to meet cost, technical performance, and schedule objectives. SE activities ensure that integration of these engineering concerns is addressed up-front and early in the design/development process. These activities include: producibility engineering, logistics support analysis, survivability, human factors and the "ilities"—realiability, quality, maintainability, availability, inspectability, et cetera. Although some of these activities will be specifically addressed in other categories below (such as product assurance, and test and evaluation), the focus of the evaluation of systems engineering is on the integration of these specific areas. The scoring of systems engineering needs to remain flexible to allow a program manager to account for program unique technical concerns and to allow for the changing systems engineering environment as a program moves from dem/val to FSD, production and beyond.

(p) *Item 14a(2).* Software development. Evaluate the extent to which the contractor is meeting the software development, modification, or maintenance contract requirements or a government-approved software development plan. Consider the amount of quality of software development resources devoted to support the contract effort.

(q) *Item 14b.* Schedule. Evaluate the contractor's adherence to the contract schedule. Identify in item 16 the major milestones, deliverable items, or significant data items which contribute to the schedule evaluation. The short narrative explanation in item 16 should address significance of items, discuss causes, and evaluate effectiveness of contractor corrective actions. if CPR or C/SSR data are available and the schedule variance exceeds 15 percent (positive or negative), briefly discuss in item 16 the significance of this variance for the contract effort. Cumulative schedule variance in dollars is defined as budgeted cost of work performed (BCWP) minus budgeted cost of work scheduled (BCWS). Percent schedule variance is defined as $((BCWP - BCWS)/BCWS) \times 100$.

(r) *Item 14c.* Cost performance. If CPR or C/SSR data are available, evaluate current cost variance if the contract is greater than 10 percent complete. Put the current percent variance and government estimate at completion in item 15 and give a short narrative explanation of causes and contractor-proposed solutions in item 16. See item 8 to calculate percent complete. Compute current cost variance percentage by dividing cumulative cost variance to date (column 11 of the CPR, Column 6 of the C/SSR) by cumulative BCWP and multiplying by 100. Compute completion cost variance percentage by dividing CBB less the government's estimate at completion (EAC) by CBB and multiplying by 100. The calculation is $((CBB - EAC)/CBB) \times 100$. The CBB must be the current budget base against which the contractor is peforming (including formally established overtarget baselines (OTB)). If an OTB has been established since the last CPAR, a brief description in item 16 of the nature and magnitude of the baseline adjustment must be provided. Subsequent CPARs must evaluate cost performance in terms of the revised baseline and reference the CPAR which described the baseline adjustment (for example: "The contract baseline was formally adjusted on (date). See CPAR for (period coverd by CPAR) for an explanation.") If CPR data or C/SSR data are not available, evaluate contractor cost management. Is the contractor experiencing cost growth or underrun? Provide a short narrative explanation in item 16 of causes and the contractor's proposed solutions.

Note: Because of the nature of the data presented in both the cost and schedule areas, these areas reflect cumulative information to some extent. Overall performance to contract schedule/price requirements is of more value in future source selections than incremental data for individual periods of time. Therefore, it may be the case that a schedule slip or cost growth in a previous period will drive a lower rating for follow-on evaluation periods. In such situations, arrows should be used to indicate the current performance trend, and an explanation should be included in item 16.

(s) *Item 14d.* Product assurance. The primary areas of consideration focus on satisfying the requirements of the functional "ilities": quality, producibility, reliability, maintainability, inspectability, testability, et cetera. The program manager must be flexible in how he measures contractor success. Examples of possible measures are: data from design test/operational testing successes; field reliability and maintainability reports; user complaints and acceptance rates; reduced inspection and oversight activity; improved subcontractor and vendor quality; reduced cost of material handling; cost of quality information; and scrap and rework rates. (These quantitative indicators may be useful later, for example in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in Total Quality Management or R&M 2000).

(t) *Item 14e.* Test and evaluation. Evaluate the adequacy of the contractor's performance in planning,

supporting, conducting, and assessing the in-house and independent test and evaluation programs.

(u) *Item 14f.* ILS program. Evaluate the adequacy of the contractor's performance in accomplishing integrated logistics support (ILS) program tasks and in performing logistics support analysis activities. The nine ILS element groupings are maintenance planning; manpower and personnel; supply support; support equipment; technical data; training and support; computer resources support; facilities, packaging, handling, storage, and transportation; and design interface.

(v) *Item 14g.* Management responsiveness. Evaluate the adequacy of the contractor's responsiveness to the Air Force's needs. Address issues such as: the timeliness and quality of problem identification; corrective action plans; and timeliness, completeness and quality of proposal submittals, especially in response to change orders or other undefinitized contractual actions.

(w) *Item 14h.* Subcontract management. Evaluate the contractor's effort devoted to managing subcontracts. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contract performance.

(x) *Item 14i.* Other. Specify any additional evaluation areas that are unique to the contract, or that cannot be captured elsewhere on that form. More than one type of entry may be included, but should be separately labeled. Block 16 should be used for any needed additional space.

(1) If the contract contains an award fee provision, enter "award fee" in the "Other" block. Use the columns, beginning with the "Past Color" column, to record the award fee percentages earned. Subsequent columns should be used if there was more than one award fee earned during the period covered by the CPAR(as reflected in item 3). For example, if two award fees were earned during the CPAR period and the contractor earned 80% on both, the item 14i entry under "Past Color" would read: "1–80%" and under "Red" the entry would read: "2–80%". In addition, the program manager may translate the award fee earned to color ratings, which could prove more useful for using past performance to assess future performance risk in upcoming source selections. In this instance, the item 14i entry could read: "1–Green" or "1–80%–Green." If award fee information is included in the CPAR, use Block 16 to provide a description for each award fee listed in item 14i. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract. Also include the dollars awarded at each award point in the item 16 narrative in the same format as that described for item 14i.

(2) If any other type of contract incentive is included in the contract, it should be reported in a manner similar to the procedures described above for award fee. Enter "Incentive" in item 14i.

(3) Use block 14i in those instances where the program manager or director believes strongly, either positively or negatively, regarding an aspect of the contractor's performance, but cannot fit that aspect into any of the other blocks on the form. Examples include: significant progress toward overhead reduction, the results of which have been tracked and verified by the program manager or director; successful implementation of an effective TQM program; or active participation in the VECP program.

(y) *Item 15.* Variances. If CPR or C/SSR data are available, identify the cumulative cost variance to date (percent); the government's cost estimate at completion (percent); and the cumulative schedule variance (percent). See item 14c and 14b for calculations.

(z) *Item 16.* Program manager/director's narrative. A short, factual narrative statement is required for all assessments regardless of color rating. Comments must be numerically cross-referenced to their corresponding evaluation area in item 14. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal engineering design/support assessment could, for example, be supported by information concerning personnel changes. Key engineers familiar with the effort may have been replaced by less experienced engineers. Sources of data include Air Force Operational Test and Evaluation Center operational test and evaluation results; technical interchange meetings; production readiness reviews; earned contract incentives; or award fee evaluations.

(aa) *Item 17.* Program manager/director signature block. This is signed prior to forwarding the form to the contractor for review.

(bb) *Item 18.* Contractor comments (contractor's option). See § 838.6(c) for guidance on sending the CPAR to the contractor for review and comment.

(cc) *Item 19.* Contractor representative signature block.

(dd) *Item 20.* Review by product division reviewing official. The reviewing official must be at least one level above the program director or manager, and a general officer, member of the Senior Executive Service, or the activity commander or vice commander. This individual will be designated by local procedures.

(ee) *Item 21.* Product division reviewing official signature block.

§ 838.11 Instructions for completing AFSC Form 125A, Contractor Performance Assessment Report—CPAR (Service).

Type all information on the form. No handwritten CPARs will be accepted by the CPAR focal points.

(a) *Item 1.* State the name and address of the division or subsidiary of the contractor performing the contract. Identify the parent corporation (no address required). Identify the contractor's Department of Defense Activity Address Directory code.

(b) *Item 2.* Indicate whether, in accordance with § 838.6, the CPAR is an initial, intermediate, or final report.

(c) *Item 3.* State what period is covered by the instant report. In no instance should a CPAR period of evaluation include previously reported effort (i.e., CPARs are not cumulative or overlapping).

(d) *Items 4–6.* Contract number, AFSC activity name and office symbol and location of contract performance.

(e) *Item 7.* State current contract period of performance, including any authorized extensions, such as exercised options.

(f) *Item 8.* If cost performance report (CPR) or similar reporting system is applicable to the contract, follow CPAR (System) instructions in § 838.10(f). For Indefinite Delivery (ID) contracts, divide the dollars obligated through the end of the reporting period by the dollar value listed in item 9 and multiply by 100. For other contract types, divide the number of months elapsed since contract award by the total number of months in the contract period of performance (as reflected in item 7) and multiply by 100.

(g) *Item 9.* For ID or task order contracts, state the maximum dollar value of all orders which could be placed against the contract over its entire life. For other contract types, state the face value of the contract.

(h) *Item 10.* Indicate whether competitive, noncompetitive or 8a contract.

(i) *Item 11.* Use this block to describe key features of the contract. Two examples of such a description might be:

(1) Task Order with T&M type orders. Also contains award fee.

(2) FFP contract with award fee.

(j) *Item 12.* For ID or task order contracts, provide a task/delivery order status by inserting the appropriate numbers in the blanks in lines 2, 3, and 4. For other contract types, place an "X" in the blank for not applicable.

(k) *Item 13.* Provide a short, descriptive title of the program.

(l) *Item 14.* Provide a short descriptive narrative of the contract work effort. This section is of critical importance to future performance Risk Analysis Groups (PRAGs) to allow them to determine the relevancy of the contract being reviewed to their source selection. In general, the scope, complexity and overall technical risk should be addressed along with information on the extent of subcontract management which may be involved. Of particular importance is the description of the functional specialty expertise being employed on the contract. For manpower support contracts which include multiple functional disciplines, each category or area should be separately numbered, titled and described within item 14. The purpose of this segregation is to avoid combining the assessments in items 15 and 16 of dissimilar work efforts, i.e., civil engineering support with scientific analysis tasks. However, like functional efforts should be grouped in one category to avoid unnecessary segregation of essentially similar specialties. If necessary, the description within this block may be extended to one additional single-spaced typewritten page. The numbering in this section will allow the functional descriptions to be cross-referenced with the evaluation of the contractor's performance within each discipline which will be recorded in item 15 and explained in item 16.

(m) *Item 15.* Evaluation areas. In preparing the CPAR (Service), the contract monitor should ensure each area assessment is based upon objective facts which will be summarized in item 16. To round out these facts, subjective assessments concerning the causes or ramifications of the contractor's performace should be provided. However, speculation, conjecture, or "gut feel" should not be used as a basis for the ratings provided. It may frequently be necessary for the contract monitor to integrate several diverse inputs to arrive at a single color score and narrative for each block on the CPAR (Service). This integration should normally be based upon judgment, rather than an arithmetic summation of inputs received. The contract monitor's judgment can be based upon a number of factors, some of which are illustrated below:

(1) The monitor may choose to weight performance on larger or more sensitive tasks more heavily than other tasks. In this case, the contract monitor should explain the basis for the score in the item 16 narrative. For example, the monitor might score an item 15 subitem as blue and state in item 16, "The contractor provided exceptional support for the XYZ and ABC projects which are the biggest and most sensitive projects on which they are currently performing. There have been some minor problems on 2 of 6 other tasks the contractor is supporting, however, these problems are being addressed and do not detract significantly from their superior performance on the two (XYZ and ABC) largest projects."

(2) The monitor may highlight significantly positive or negative performance on any task even if overall performance on the item being scored was acceptable (green). In this case, for example, the monotor might score item 15e(1), test result analysis, as yellow and state in item 16, "Although overall performance in this area was acceptable during this period, their analysis of one of the five tests (X missile shot 20) was superficial and inaccurate, causing severe program interruption."

(3) If all inputs are judged to be of equal significance, then a quantitative summary can be used as the basis for the score provided in item 15. However, the description in item 16 should provide a full summary. For example, "The overall green rating is based upon 10 inputs, each of which is considered to be of equal significance as an indicator of the contractor's capability. Inputs received were as follows: 2-Blue, 7-Green, and 1-Yellow."

(4) Scoring will be in accordance with the definitions described in § 838.10(m), "Evaluation colors."

(5) The CPAR (Service) is designed to assess prime contractor performance. However, in those evaluation areas in which subcontractor actions have significantly influenced the prime contractor's peformance in a negative or positive way, refer to the subcontractor actions in item 16.

(n) *Item 15a.* Management responsiveness. Evaluate the adequacy of the contractor's responsiveness. Address the extent to which the contractor demonstrates a thorough understanding of the customer's environment, keeps the government informed of work progress and provides for early problem identification and effective corrective action plans. In addition, the effectiveness of corporate "off-site" support to the "on-site" workforce should be considered along with the timeliness of their proposal submission activity.

(o) *Item 15b.* Contract mgmt/admin. Evaluate the quality and effectiveness of the contractor's management of the contract. This may include an assessment of the quality of the contractor's facilities and equipment, as well as an evaluation of the effectiveness they exhibit in the application of those tools. Address the adequacy of the contractor's initial and replenishment staffing. Also, evaulate effectiveness of the subcontract management activity, if applicable, and the contractor's overall administration of the contract.

(p) *Item 15c.* Schedule control. Evaluate the contractor's overall adherence to contract or task order schedules. For ID or task order contracts, quantify in item 16, to the extent possible, the percentage of tasks being completed on time, ahead of schedule or behind schedule. For all contracts, discuss in items 16 the milestones, deliverable items or significant data items that contribute to the schedule evaluation. If CPR or C/SSR data are available, the procedures described in § 838.10(q) may be used to evaluate schedule control.

(q) *Item 15d.* Cost control. For manpower support contracts where task or contract sizing is based upon contractor provided person-hour estimates, the relationship of these estimates to ultimate task cost should be assessed. In addition, the extent to which the contractor demonstrates a sense of cost responsibility, through the efficient use of resources in each work effort, should be evaluated. On the other hand, in those cases where the government exercised control over the costing of work efforts, this item may be judged to be "not applicable." If CPR or C/SSR data are available, the procedures described in § 838.10(r) (item 14c) may be used to evaulate cost control.

(r) *Item 15e.* Performance. Each of the functional specialties described in item 14 should be separately cross referenced, scored and evaluated under this item. If the contract covers only one functional area, then only one line of this item would be utilized. If more than 10 areas are involved, areas 11 and on should be listed, scored and evaluated as part of item 16.

(s) *Item 15f.* Other. Specify any additional evaluation areas that are

unique to the contract, or that cannot be captured elsewhere on the form. More then one type of entry may be included, but should be separately labeled. If extra space is needed, use block 16.

(1) If the contract contains an award fee provision, enter "award fee" in the "Other" block. Use the columns, beginning with the "Past Color" column, to record the award fee percentages earned. Subsequent columns should be used if there was more than one award fee earned during the period covered by the CPAR (as reflected in item 3). For example, if two award fees were earned during the CPAR period and the contractor earned 80% on both, the item 15f entry under "Past Color" would read: "1—80%" and under "Red" the entry would read: "2—80%." In addition, the program manager may translate the award fee earned to color ratings, which could prove more useful for using past performance to assess future performance risk in upcoming source selections. In this instance, the item 14i entry could read: "1—Green" or "1—80% Green." If award fee information is included in the CPAR, use Block 16 to provide a description for each award fee listed in item 15f. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract. Also include the dollars awarded at each award point in the item 16 narative in the same format as that described for item 15f.

(2) If any other type of contract incentive is included in the contract, it should be reported in a manner similar to the procedures described above for award fee. Enter "incentive" in item 15f.

(3) Use block 15f in those instances where a program manager or director believes strongly, either positively or negatively, regarding an aspect of the contractor's performance, but cannot fit that aspect into any of the other blocks on the form. Examples include: significant progress toward overhead reduction, the results of which have been tracked and verified by the program manager or director; successful implementation of an effective TQM program; or active participation in the VECP program.

(t) *Item 16.* A short, factual narrative statement is required for each subitem assessment in item 15, regardless of color rating. Comments must be numerically cross-referenced to their corresponding evaluation area in item 15. The contractor monitor may extend his comments to one additional single-spaced typewritten page (however, see § 838.7(c)).

(u) *Item 17.* This item is signed prior to forwarding the CPAR (Service) form to the contractor for their review. See § 838.6 (c) through (e) of this part for guidance on sending the CPAR (Service) to the contractor and guidance on revising the evaluation following receipt of contractor comments.

(v) *Items 18–19.* Contractor comments (contractor's option) and typed name and title of contractor representative.

(w) *Item 20.* The review official must be at least one level above the contract monitor, and must meet qualifications enumerated in § 838.7(f) of this part.

(x) *Item 21.* Typed name and title of reviewing official.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–5924 Filed 3–14–90; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 410, 413 414, 417, 424, 466, 473, 485, 489, and 494

[BPD–659–N]

Medicare Program; Catastrophic Outpatient Drug Benefit, Home Intravenous Drug Therapy Benefit, and Screening Mammography Services—Withdrawal

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Withdrawal of proposed rules.

SUMMARY: This notice announces the withdrawal of several proposed regulation documents that would have implemented certain provisions of the Medicare Castastrophic Coverage Act of 1988 by establishing new outpatient drug and home intravenous drug therapy benefits, expanding immunosuppressive drug coverage, and providing limited coverage for screening mammography services under Medicare part B. This notice implements section 201 of the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234, enacted December 13, 1989).

DATES: This withdrawal is effective March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Michelle Bruggy, 301–966–4683.

SUPPLEMENTARY INFORMATION: The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360, enacted on July 1, 1988) established a new catastrophic outpatient drug benefit under Medicare part B. Public Law 100–360 also provided for limited coverage for screening mammography services under Medicare part B. To implement the provisions of Public Law 100–360, we published several proposed documents. The titles and publication dates of these documents, and the **Federal Register** page numbers on which they appear are listed below.

Document Title	Publication date	FR page
Medicare Coverage of Screening Mammography (BPD–619–P)	09/01/89	36736
Catastrophic Outpatient Drug Benefit (BPD–613–P)	09/07/89	37190
Payment for Covered Outpatient Drugs (BPD–614–P)	09/07/89	37208
Conditions of Participation for Home Intravenous Drug Therapy Providers (BPD–617–P)	09/07/89	37220
Outpatient Prescription Drugs: List of Covered Home IV Drugs (BPD–621–PN)	09/07/89	37239
Coverage of Home Intravenous Drug Therapy Services (BPD–615–P)	09/08/89	37422
Payment for Home Intravenous Drug Therapy Service (BPD–618–P)	11/08/89	46938

All of these proposed documents solicited public comments and allowed 60 days from the date of publication for receipt of comments. To ensure a coordinated comment period for all of the drug benefit-related catastrophic regulation documents, we published a notice on November 8, 1989 (54 FR 46937), which extended the due date for receipt of public comments on these documents to January 8, 1989.

On December 13, 1989, the Medicare Catastrophic Coverage Repeal Act of 1989 (Public Law 101–234) was enacted. Section 201 of Public Law 101–234 withdraws the sections of Public Law 100–360 on which all of the regulation documents listed above were based. Therefore, this notice announces withdrawal of all of those proposals.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: December 20, 1989.

Louis B. Hays

Acting Administrator, Health Care Financing Administration.

Approved: February 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–5883 Filed 3–14–90; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Proposed Rule to List Potamogeton Clystocarpus as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Potamogeton clystocarpus* (Little Aguja Creek pondweed), as an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant is known from a single canyon in the Davis Mountains of Texas. The three populations in the intermittent steam are threatened by changes in water quality and trampling of the streambed by cattle. This proposal, if made final, would implement Federal protection provided by the Act for *Potamogeton clystocarpus.*

DATES: Comments from all interested parties must be received by May 14, 1990. Public hearing requests must be received by April 30, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, at the above address (512/888-3346 or FTS 529-3346).

SUPPLEMENTARY INFORMATION:

Background

Potamogeton clystocarpus is a member of the pondweed family (Potamogetonaceae) and is endemic to a single intermittent stream in Little Aguja Canyon in the Davis Mountains of Texas. The plant occurs in isolated, quiet pools of water in igneous derived alluvium in the streambed draining Little Aguja Canyon, which is deep and rocky. The subterranean stream surfaces in only a few places. Most of its course is underground through gravel bars. Potential habitat is limited to only a few deep pools (Kenneth Wurdack, *in litt.*) with sufficient light levels. Associated species include *Potamogeton foliosus, P. pectinatus,* (Sago pondweed), *P. pusillus, P. nodosus,* and *Najas quadalupensis* (Guadalupe water nymph) (Rowell 1983). The population occurs within the Trans Pecos Biotic Community (Gould 1975).

Potamogeton clystocarpus is an aquatic plant with a slender branched, rounded to slightly compressed stem, usually with a pair of small translucent glands at the nodes. Leaves are submerged, linear, light green, and translucent to sub-opaque, and 2–4.5 inches (5–11.5 cm) long. Peduncles are thread-like; spikes are emergent while flowering, but submerged while fruiting; cylindrical, and about ⅜ inch (0.95 cm) long, with 2 or 3 whorls of flowers. Fruits have 2 or more warty protuberances at the base, and develop from early May to October, or later.

The only known extant populations are from scattered quiet pools of water in an intermittent stream in the Little Aguja Canyon in Jeff Davis County, Texas. Many quiet pools of water are present in the stream bed of Little Aguja Canyon, but the species has a very scattered distribution. Where present, it is generally in a small isolated population (Rowell 1983). Three collection localities for *Potamogeton clystocarpus* are known. They occur on land owned by the Boy Scouts of America and a private ranch. Both landowners were informed by letter of the presence of the plant on their land, the anticipated proposal, and how they may be affected.

Rowell (1983) made repeated trips to the area and examined pools in adjacent canyons. He found populations in only two pools in Little Aguja Canyon on land owned by the Boy Scouts of America. He also examined Limpia Creek, also in the Davis Mountains of Jeff Davis County, but did not find this species in any of its pools. A graduate student from Sul Ross State University completed a floristic study of the area including lower Little Aguja Canyon (Powell, *in litt.).* During her study of the distribution of *P. clystocarpus* (1985–87), she located one population on property owned by the Boy Scouts of America, and two populations on property owned by a private ranch (Allen, *in litt.).* Because permanent water sources in the area have been examined thoroughly, it is unlikely that additional populations outside of the canyon will be discovered in the future (Wurdack, *in litt.).*

Potamogeton clystocarpus was first collected in 1931 by Moore and Steyermark. The species was described by Fernald (1932) based on its large sepaloid connectives and distinctive fruit having swollen and tuberculate bases (Haynes 1974). The only other species with fruits similar to *P. clystocarpus* occur in Eurasia and Africa.

Potamogeton clystocarpus is threatened throughout its range by cattle trampling and possible changes in water quality (Wurdack *in litt.).* Cattle may also eat the plants. Pondweeds (*Potamogeton* spp.) are a significant source of food for ducks and numerous aquatic invertebrates (Haynes 1974). The very small range of distribution and lack of legal protection for this species contribute to the severity of existing threats.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.),* which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Potamogeton clystocarpus* was included as "endangered" in the July 1, 1975, petition. On July 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of this Act; *Potamogeton clystocarpus* was included in this proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979 (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. *Potamogeton clystocarpus* was included as a category 1 species in the revised notice of review for native plants published on December 15, 1980 (45 FR 82480). Category 1 species are those for which the Service has substantial information on biological vulnerability and threat(s) to support the appropriateness of proposing to list them as endangered or threatened. When the notice of reveiw for native plants was again revised in 1983 (48 FR 53640), *P. clystocarpus* was included as a category 2 species, which are those species for which the Service has information that indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the

preparation of rules. In the 1985 revised notice of review for native plants (50 FR 39526), *P. clystocarpus* was returned to Cataegory 1. The Service funded a status survey to determine the status of *P. clystocarpus*, and the final report for this survey was accepted by the Service in 1983. Additional information on the status of the species throughout its range and on threats to its continued existence have now been obtained by the Service.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *P. clystocarpus*, were treated as being newly petitioned on October 13, 1982. In 1983, 1984, 1985, 1986, 1987, 1988, and 1989, the Service found that the petitioned listing of *Potamogeton clystocarpus* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. This proposal constitutes the final 1-year finding as required by the 1982 amendments to the Endangered Species Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Potamogeton clystocarpus* Fernald (Little Aguja Creek pondweed) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Little Aguja Creek pondweed is threatened throughout its range by cattle trampling and possible changes in water quality. At least one stream pool is a favorite cattle watering hole and shows heavy traffic around its fluctuating edge. Plants are uprooted in the pool. The main damage from cattle is in the deterioration of water quality. The cattle deposit large quantities of manure around the pool, and the subsequent nutrient leaching causes an explosion in algal growth. As a result, the pool surface is covered with green scum and in the still pool drainage the *Potamogeton clystocarpus* plants are invisible under a choking cloak of algae. Algae-loaded plants also show a tendency to break off their root systems in the stream currently due to the increased surface area. If these pieces of *P. clystocarpus* come back in contact with the substrate, they may reroot, but this probably rarely happens. It is even less likely that a root system will sprout new foliage (Wurdack *in litt.*).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known, although recreational activities that would impact the streambed and scientific collecting would both have adverse effects on this plant.

C. *Disease or predation.* Cattle trample ponds in the bottom of Little Aguja Canyon, uprooting plants in the streambed. The cattle may also eat the plants.

D. *The inadequacy of existing regulatory mechanisms.* There are no existing Federal or State laws that protect *P. clystocarpus*. The Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* *Potomageton clystocarpus* is a relictual aquatic plant in an arid environment. Its existence is precarious, even without additional stress. Historically, the plant has had a marginal existence because of the abrasive action of floods (Wurdack *in litt.*). Any change in land use practices that might result in permanent change in the canyon would have an adverse effect on this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Potamogeton clystocarpus* as endangered. With only three populations known, the species is in imminent danger of extinction. *P. clystocarpus* is vulnerable to damage from cattle, including changes in water quality and trampling of streambeds. The plant is not protected by Federal or State law. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The populations of this species are small, and loss of even a few individuals to activities such as collection for scientific purposes could extirpate the species from some locations. Publication of critical habitat description and maps would increase the vulnerability of the species without significantly increasing protection. The owners and managers of all the known populations of *Potamogeton clystocarpus* have been notified of the species' location and of the importance of protecting the species and its habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Potomogeton clystocarpus*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All of the known populations of *Potamogeton*

clystocarpus are on privately-owned land. There are no known current or planned Federal activities that may affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violations of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conversation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22201 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (See **ADDRESSES**).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Reference Cited

Gould, F.W. 1975. Texas Plants: a checklist and ecological summary. Texas Agricultural Experiment Station, Texas A&M University, College Station, Texas.

Haynes, R.R. 1974. A revision of North American *Potamogeton* subsection Pusilli (Potamogetonaceae). Rhodora 76: 624–626.

Rowell, C.M., Jr. 1983. Status report, *Potamogeton clystocarpus* Fern. U.S. Fish and Wildlife Service, Albuquerque, NM. 9pp.

Author

The primary author of this proposed rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * * *

(h)* * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Potamogetonaceae family:	Pondweed					
Potamogeton clystocarpus	Little Aguja Creek pondweed	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	

Dated: February 20, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–5859 Filed 3–14–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 51
Thursday, March 15, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Building and Zoning Permits.

Form Number(s): C-411.

Agency Approval Number: 0607-0350.

Type of Request: Revision of a currently approved collection.

Burden: 500 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Bureau of the Census uses this form to obtain information necessary to update the universe of building permit issuing places. Specifically, the form is used to verify the existence of a new permit issuing system or changes to an existing system. Information is obtained on such items as geographic coverage and types of construction for which permits are issued. Several statistical series which serve as key economic indicators are developed from samples drawn from this universe.

Affected Public: State or local governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 8, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-5872 Filed 3-14-90; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1990 Puerto Rico Content Reinterview Survey.

Form Number(s): D-1010PR(S), D-1010LPR(S).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 832 hours.

Number of Respondents: 1,600.

Avg Hours Per Response: 32 minutes.

Needs and Uses: The Bureau of the Census will use the 1990 Puerto Rico Content Reinterview Survey to collect information from 1,600 households after the 1990 decennial census of Puerto Rico to evaluate the census results. The questionnaire uses in-depth questions about population and housing characteristics to test the quality of data collected and to measure response error. The results of the survey will not only provide the public with information as to the types and magnitudes of error in the census data for Puerto Rico, but they will also aid in reducing possible error in future censuses and surveys in Puerto Rico.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 8, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-5873 Filed 3-14-90; 8:45 am]

BILLING CODE 3510-07-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Prepreg Production Equipment: Solicitation of Public Comments on Impact of Foreign Availability Determination.

Form Number: Export Administration Regulations, Section 791.4.

Type of Request: New Collection.

Burden: 8 respondents; 40 reporting hours. Average time per respondent is 5 hours.

Needs and Uses: This collection is a request for comments from manufacturers of prepreg production equipment which will be used to prepare a statement by the Secretary of Commerce concerning the economic impact of the President's decision to continue export controls on prepreg production equpment.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, D.C. 20503.

Dated: March 8, 1990.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 90-5874 Filed 3-14-90; 8:45 am]
BILLING CODE 3510-07-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

March 8, 1990.

The USAF Scientific Advisory Board will hold its Spring General Board Meeting on 25-26 April 1990 from 8 a.m. to 5 p.m. at the Warner-Robins Air Logistics Center Conference Center, Robins AFB, Georgia.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) Thereof, and accordingly will be closed to the public.

The purpose of this meeting is to enable Board members, key military leaders, and participants to understand the important issues associated with Air Force Logistics Command mission. The meeting's theme is "Air Force Logistics Command—Technology Supporting the Air Force."

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 90-5925 Filed 3-14-90; 8:45 am]
BILLING CODE 3910-01-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Restart of K, L, and P Reactors at DOE Savannah River Site; Correction

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; proposed recommendations; correction.

SUMMARY: This notice corrects the location of the Savannah River site previously published in the **Federal Register** issue of February 28, 1990 (55 FR 7022).

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, 202/356-5083 (FTS) 356-5083.

In FR Doc. 90-4542, change "Georgia" to "South Carolina" everywhere it appears.

Dated: March 9, 1990.
Kenneth M. Pusateri,
Acting Executive Director.
[FR Doc. 90-5907 Filed 3-14-90; 8:45 am]
BILLING CODE 6820-KD-M

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of dates for submission of State revenue and expenditure reports for fiscal year 1989 and of revisions to those reports.

SUMMARY: The Secretary of Education announces a date for the submission by State educational agencies (SEAs) of preliminary expenditure and revenue data and average daily attendance statistics for fiscal year (FY) 1989 and establishes a deadline for any revisions to that information. The setting of these dates is necessary to ensure timely distribution of Federal funds. The data will be published by the Department's National Center for Education Statistics (NCES) and will be used by the Secretary in the calculation of allocations for FY 1991 appropriated funds.

DATE: The suggested date for the submission of preliminary data is March 15, 1990. The mandatory deadline for the submission of revisions is September 4, 1990.

ADDRESSES: An SEA is urged to mail ED Form 2447 (The National Public Education Financial Survey—Fiscal Year 1989) by the first date specified in this notice and shall mail any revisions to that data on or before the mandatory deadline date to—

U.S. Department of Education, Office of Educational Research and Improvement, National Center for Education Statistics, Attention: GSAB—Fiscal Survey, 555 New Jersey Avenue NW., Washington, DC 20208-5651.

Note: The mandatory deadline date applies to all types of mail and supersedes any mailing information in the instructions provided by the Department to SEAs with ED Form 2447 in December 1989.

If the SEA wishes to hand deliver any revisions, it shall do this to room 410 of the address above by 4 p.m. (Washington, DC, time) on the mandatory deadline date.

The SEA must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Dr. William J.Fowler, Jr., at the address specified above or by telephone: (202) 357-6921.

SUPPLEMENTARY INFORMATION: Under the authority of section 406(g) of the General Education Provisions Act, as amended (20 U.S.C. 1221e-1(g))—which authorizes NCES to gather data from States on the financing of elementary and secondary education—NCES collects data annually from SEAs through ED Form 2447. NCES mailed the form and instructions to SEAs in December 1989. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines, among other statistics, the average State per pupil expenditure (SPPE) for elementary and secondary education.

SPPE data provide useful statistical information, and they are needed by the Secretary for calculating State allocations under certain formula grant programs, including chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (chapter 1), Financial Assistance for Local Educational Agencies in Areas Affected by Federal Activity (Impact Aid), Financial Assistance to Local Educational Agencies for Education of Indian Children (Indian Education), Part B—Assistance for Education of All Handicapped Children (Education of the Handicapped), title VII of the Stewart B. McKinney Homeless Assistance Act, and other programs whose allocations are based, in whole or in part, on the SPPE data derived from the information reported by SEAs.

In December 1989 NCES mailed to SEAs ED Form 2447 with instructions and requested that SEAs submit initial data to the Department by March 15, 1990. If an SEA does not submit initial FY 1989 data on ED Form 2447 on or about March 15, 1990, it should inform

NCES, in writing, of the delay and the date by which it will submit FY 1989 data. Submissions by SEAs to NCES are edited by NCES and returned to each SEA for verification. NCES acknowledges that data submitted prior to September 4, 1990, may be preliminary and are subject to revision by an SEA by September 4, 1990.

To ensure timely distributions of Federal education funds based on the best, most accurate data available, NCES must establish, for allocation purposes, a final date by which ED Form 2447 must be submitted. SEAs should be aware, however, that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Authority: 20 U.S.C. 1221e–1(g).

Dated: March 13, 1990.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–6094 Filed 3–14–90; 8:45 am]

BILLING CODE 4000–01–1

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Friday, March 23, 1990, at the Organization for Economic Cooperation and Development (OECD), Chateau de la Muette, 2, rue Andre Pascal, Paris France, beginning at 9 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the OECD offices on that date. The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda
2. Summary Record of the 63rd Meeting
3. IEA Emergency Response Systems
—Working Group on Design of Coordinated Emergency Response Measures Test 2
—Working Group on Emergency Sharing System Operations Manual
—Tanker Capacity Trends in Relation to the Emergency Sharing System
—Membership of National Emergency Sharing Organizations (NESOs) and Industry Supply Advisory Group (ISAG)
4. Emergency Response Programs of IEA Member Countries
—Test of IEA Emergency Allocation Procedures by the Canadian NESO
—Review of Member Countries' Emergency Response Programs
—Reveiw of the United States
—Report by the Department of Energy on the Strategic Petroleum Reserve Size Study
—Review of Denmark
—Review of Netherlands
—Review of Ireland
—Revier of the U.K.
—Review of Canada
—Content and Scope of Emergency Response Reviews
—Calendar for Reviews
5. Emergency Reserve Situation of IEA Countries
—Emergency Reserve and Net Import Situation of IEA Member Countries on 1st October 1989 (Draft Report to the Governing Board)
—Periodical Meeting of Stockholding Bodies
6. Emergency Data Systems
—Simplification of Questionnaire C (QuC) and Improvement of procedures to provide basic QuC data
—Working Group on Questionnaires A and B reporting instructions
—Base Period Final Consumption (BPFC)
—4Q88–3Q89
—1Q89–4Q89
—Monthly Oil Statistics (MOS)
—to November 1989
—to December 1989
7. Quarterly Oil Forecast 1Q90/4Q90
8. IAB Meeting of May 29th/30th and Other IAB Issues
9. Any Other Business
—End-February Monthly Oil Report
—Issues Relating to Changing Oil Market Structures and Methods of Operation
10. Date of Next Meeting

As provided in section 252(c)(2)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the IAB, their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, March 9, 1990.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 90–6000 Filed 3–14–90; 8:45 am]

BILLING CODE 6450–01–M

Assistant Secretary for International Affairs and Energy Emergencies; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Spain concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves the approval of the following retransfer: RTD/EU(SP)–22, for the transfer of irradiated fuel elements from a research reactor in Spain to the United Kingdom for storage. The fuels elements are to be subsequently exported to the United States for reprocessing and storage. The fuel elements contain 10,150 grams of uranium, enriched to an average of 40.10 percent in the isotope uranium–235, and 5,900 grams of uranium, enriched to an average of 15.25 percent in the isotope uranium–235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

The subsequent arrangement will take effect no sooner than March 30, 1990.

For the Department of Energy.

Issued in Washington, DC, March 12, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90–5999 Filed 3–14–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–62–NG]

Pacific Gas Transmission Co.; Order Granting Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of order amending authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Pacific Gas Transmission Company (PGT) an extension of the term of its existing import authorization from October 31, 1993, to October 31, 2005. The extension will permit PGT to continue to import up to 1,023 MMcf per day of Canadian natural gas via the import point near Kingsgate, British Columbia for an additional 12 years. During the extended term, the gas would continue to be imported under the terms of PGT's existing gas sales contract with Alberta and Southern Gas Company Ltd. and transported via PGT's existing pipeline facilities for delivery at the California border to PGT's only sales customers, Pacific Gas and Electric Company.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 (202) 586–9478.

The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 6, 1990.

Michael R. McElwrath,

Principal Deputy Assistant Secretary, Fossil Energy.

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of November 6 through November 10, 1989

During the week of November 6 through November 10, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Boulder Scientific Co., 11/8/89; KFA–0316

The Boulder Scientific Company filed a Motion for Reconsideration of the dismissal of the firm's Appeal from a partial denial by the Savannah River Operations Office of a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Motion for Reconsideration, the DOE found that serious illness of the Firm's counsel constituted good cause for considering the motion. In reviewing the underlying FOIA Appeal, the DOE found that two documents evaluating the supply of Sodium Tetraphenylborate had been properly withheld by the Savannah River Office pursuant to the Deliberative Process Privilege incorporated into Exemption 5 of the FOIA. The DOE also found, however, that the two documents contained non-exempt factual material that should be released to the Firm. Consequently, the DOE remanded the Firm's FOIA request for either release of the two documents or a new determination in accordance with the FOIA regulations.

Refund Applications

Atlantic Richfield Co./Bylo Oil Co., et al., 11/9/89; RF304–2372, et al.

The DOE issued a Decision and Order concerning four (4) Applications filed in the Atlantic Richfield special refund proceeding. All of the applicants were resellers or retailers that elected to limit their refunds to 41 percent of their full volumetric allocations of the ARCO consent order funds. The refunds granted in this decision totalled $63,014, including $15,801 in accrued interest.

Atlantic Richfield Co./Hurlers ARCO, et al., 11/7/89; RF304–7414, et al.

The DOE issued a Decision and Order approving 55 Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. Forty-nine of the applications were granted under applicable small claims injury presumptions. The remaining application was filed by a mid-level reseller that elected to limit its refund to 41 percent of the volumetric amount. The refunds granted in this decision totalled $149,985, including $37,576 in accrued interest.

Atlantic Richfield Co./Pearr Super Service, 11/9/89; RF304–3662

The DOE issued a Decision and Order concerning one Application for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. The application was originally filed by P.A.D., Inc., a filing service, and then resubmitted under the same case number by Fuel Refunds, Inc., another filing service. The application was granted, but because P.A.D., Inc. had previously been denied the privilege of representing claimants before the OHA, and Fuel Refunds, Inc., had been denied the privilege of assuming representation of P.A.D.'s former clients, the application was processed by contacting the applicant directly and the refund check will be sent to the applicant directly. The refund approved in this decision totalled $4,315, including $1,082 in accrued interest.

Atlantic Richfield Co./Sunshine Biscuits, Inc., et al., 11/8/89; RF304–5503, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their purchases. They were end-users or reseller/retailers requesting refunds of $5,000 or less and therefore presumed injured. The refunds granted in this decision totalled $28,478, including $7,141 in accrued interest.

Bob's Exxon Servicenter, 11/7/89; RF272–45562

The DOE issued a Decision and Order denying an Application for Refund filed in the subpart V crude oil special refund proceeding. The Applicant was a motor gasoline retailer that failed to prove that he was injured by crude oil overcharges.

Exxon Corp./Appalachia Exxon, et al., 11/7/89; RF307–4807, et al.

The DOE issued a Decision and Order concerning 23 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was a direct purchaser of Exxon products and was a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $20,149 ($16,316 principal plus $3,833 interest).

Exxon Corp./Richard E. Eleazer, et al., 11/6/89; RF307–7612, et al.

The DOE issued a Decision and Order concerning 40 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was a direct purchaser of Exxon products and was a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $41,732 ($33,794 principal plus $7,938 interest).

Fleet Lines, Inc., et al., 11/8/89; RF272–10855, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 63 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim either by consulting

actual records or by using a reasonable estimate of their purchases. Each applicant was an end-user of the products it purchased and was therefore presumed injured. The sum of the refunds granted in this Decision is $216,168.

Fordham University, et al., 11/8/89; RF272–48003, et al.

The DOE issued a Decision and Order approving 48 applications for Refund submitted in the subpart V crude oil refund proceeding. Each applicant was an end-user of the refined products involved and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in the Decision was $161,237.

Getty Oil Co./Howard Enterprises, 11/8/88, RF265–2820

The DOE issued a Decision and Order concerning an Application for Refund filed by Howard's Enterprises in the Getty Oil Company special refund proceeding. The applicant made indirect purchases of Getty motor gasoline during the refund period from Jerome A. Rhoades, Inc., and documented its purchase volumes, establishing eligibility for a small purchaser refund of less tha $5,000. The refund was calculated based upon the procedures outlined in *Pioneer Corp./E.I. du Pont de Nemours & Co.*, 14 DOE ¶ 85,190 (1986) and totaled $3,057, representing $1,473 in principal and $1,584 in accrued interest.

Gulf Oil Corp./Don Childers Dist. Co., 11/9/89, RF300–10304

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Don Childers Dist. Company (Childers). Childers purchased 20,611,386 gallons of Gulf refined product as a reseller and distributed 29,231,351 gallons of Gulf refined products as a consignee. Childers did not demonstrate injury and was awarded a refund under a combination of the 40 percent presumption of injury for its reseller gallons and the 10 percent presumption of injury for its consignee gallons. Childers received a total refund of $9,716 ($7,173 principal + $2,543 interest.

Gulf Oil Corp./Duke & Long Dist. Co., Inc., Duke & Long Dist. Co., Inc., Duke & Long #1, Duke & Long #2, Duke & Long #3, Duke & Long #4, 11/9/89, RF300–525, RF300–770, RF300–7739, RF300–7740, RF300–7741, RF300–7742

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Duke & Long Dist. Co., Inc. both a consignee and a reseller of Gulf refined products. Because the combined maximum allocable shares for Duke & Long's reseller sales volumes and its consignee gallons amounted to less than $5,000, the applicant was presumed injury. The refund granted in this Decision, including accrued interest, is $6,559.

Gulf Oil Corp./Fred M. Flaniken, G.E. Douglass, Finch Oil Company, 11/9/89, RF300–4398, RF300–4563, RF300–4563

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by reseller/consignee of covered Gulf products. Because the firms' combined allocable shares for their reseller gallons and 10 percent of their consignee gallons amounted to less than $5,000, all applicants were presumed injured. The sum of the refunds granted, including accrued interest, was $14,679.

Gulf Oil Corp./Johnson's Gulf, et al., 11/7/89, RF300–10018, el al.

The DOE issued a Decision and Order concerning 16 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $38,676.

Gulf Oil Corp./Matawan Gulf Service, et al., 11/9/89, RF300–10420, el al.

The DOE issued a Decision and Order concerning 17 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $27,659.

Jacksonville Transportation Authority, 11/7/89, RF272–51064

The DOE's Officer of Hearings and Appeals considered and granted an Application for a subpart V crude oil refund filed by the Jacksonville (Florida) Transportation Authority. The total refund granted was $10,120.

Keller Industries, Inc., 11/6/89, RF272–8800

A manufacturer and distributor of aluminum building products filed an Application for Refund in the Subpart V Crude Oil Refund proceeding. A group of states filed objectives to this application, claiming that the applicant should not be eligible to receive refunds because it was not injured as a result of crude oil overcharges. The DOE rejected the states' arguments, finding that they had not met the burden of going forward with evidence to rebut the end-user presumption of injury. The DOE then reviewed the application and found that the information provided therein supported the firm's claim. Accordingly, the DOE granted a refund based on the end-user presumption of injury in the amount of $27,319.

Lehigh Portland Cement Co., et al., 11/7/89, RE272–3451, et al.

The DOE issued a Decision and Order approving refunds to six cement manufacturers in the Subpart V Crude Oil special refund proceeding. The States objected to the granting of these applications alleging that the claimants passed through some portion of the crude oil overcharges that they received. The DOE denied the objections on the grounds that specific evidence regarding the cement industry indicated that the general assumptions made by the States were incorrect for this industry. Specifically, the DOE found that the States were incorrect regarding the impact of imports on the applicants, the percentage of cement producers relying on petroleum products as a primary kiln fuel and the percentage of cement producers using energy-intensive production processes. These omissions indicated that the States' objections were not sufficient to rebut the presumption of injury, and, accordingly, the refund applications were granted. The refunds approved total $485,583, including accrued interest.

Murphy Oil Corp./Lakehead Service, 11/7/89, RF309–1378

The DOE issued a Supplemental Order rescinding a previous determination in the Murphy Oil Corporation special refund proceeding. Lakehead Service and Hammond Spur had been separately granted refunds totalling $5,292, even though both were owned by George Pluntz and Patty Pluntz. These companies should have only received a principal refund of $5,000. Therefore, the prior decision was rescinded with respect to Lakehead Service, and the Pluntzes were ordered to remit $292 in principal (and $36 in interest) to the DOE.

Murphy Oil Corp./Terpstra, Fuels, Inc., 11/9/89, RE309–971

The DOE issued a Decision and Order granting an Application for Refund filed in the Murphy Oil Corporation special refund proceeding. Terpstra Fuels, Inc. (Terpstra) based its application on its own purchases and those of P.G. Terpstra, Inc. (P.G.). Terpstra fuels had purchased all of the outstanding stock of P.G. in 1979. The OHA determined that

the right to P.G.'s refund had been transferred in the stock sale, and that Terpstra was the proper applicant for any refund based upon the P.G. purchases from Murphy. Accordingly, Terpstra was granted a refund of $1,236 ($1,012 in principal plus $224 in interest) based on collective purchases of 1,238,980 gallons of Murphy refined petroleum products.

Richardson & Bass, 11/6/89, RF272–26172

The DOE's Office of Hearings and Appeals considered and granted an application for a subpart V crude oil refund filed by Richardson & Bass. The total refund granted was $8,444.

Senn Blacktop, Inc., 11/9/89, RF272–17235

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Senn Blacktop, Inc., an asphalt manufacturing and paving company. In reaching its determination, the DOE rejected the Objection to the applicant's claim submitted by a group of States. The DOE held that industry-wide data, with no particular reference to the applicant, is insufficient to rebut the presumption of injury for end-users outside of the petroleum industry. The DOE also stated that the mere contention that an industry had the ability to pass through overcharges is not convincing evidence that particular claimants were likely in fact to have passed through overcharges. The refund granted to Senn Blacktop, Inc. was $6,378.

Shell Oil Co./Cumberland Square Shell, et al., 11/6/89, RF315–386, et al.

The DOE issued a Decision and Order granting eight (8) Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $6,950, including $1,172 in accrued interest.

Shell Oil Co./Gary D. Koch, Inc., et al., 11/9/89, RF315–5021, et al.

The DOE issued a Decision and Order granting eight 116 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share, plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $101,389 ($84,297 principal, plus $17,092 interest).

Suburban Propane Gas Corp./Sears, Roebuck and Company, 11/9/89, RF299–85

The DOE issued a Decision and Order granting an Application for Refund filed by Sears, Roebuck and Company, a purchaser of refined petroleum proudcts, in the Suburban Propane Gas Corporation special refund proceeding. According to the procedures set forth in *Suburban Propane Gas Corporation*, 16 DOE ¶ 85,382 (1987), Sears was found to be eligible for a refund based on its estimated purchases of 521,029 gallons of propane from Suburban. The total refund approved in the Decision was $719, representing $551 in principal, plus $168 in accrued interest.

Tamko Asphalt Products, 11/9/89, RF272–2787

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Tamko Asphalt Products based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used the products in its production of asphalt roofing products, and established its claim using actual purchase records. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of 29 states and two territories filed a Statement of Objections with respect to the applicant. The DOE found that objections were insufficient to rebut the presumption of injury for end-users and granted the Applications for refund. The total refund granted, including accrued interest, is $280,858.

Thompson Farmers Oil Co., 11/8/89, RF272–6132

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Thompson Farmers Oil Company (Thompson), an agricultural cooperative, based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. In accordance with DOE precedent, Thompson was treated as an end-user with respect to those petroleum purchases that it resold to its members. Since 83 percent of Thompson's petroleum product purchases during the crude oil price control period, or 7,466,251 gallons, was resold to its members, Thompson was granted a refund on these purchases. The cooperative's refund, computed on the basis of a volumetric refund amount of $0.0008 per gallon, was $5,973. The application will be eligible for additional refunds as additional crude oil overcharge funds become available.

Total Petroleum/K & S Oil Company, Inc., 11/9/89, RF310–211

The DOE issued a Decision and Order concerning an Application for Refund filed by K & S Oil Company, Inc., a petroleum products reseller. K & S sought a portion of the settlement fund obtained by the DOE through a Consent Order entered into with Total Petroleum, Inc. Since K & S claimed a refund in excess of $5,000, the firm was required to demonstrate that it was injured by Total's alleged overcharges. After a thorough evaluation of the injury documentation submitted by K & S, the DOE determined that the firm was eligible for a refund of $9,407 ($7,789 principal and $1,618 interest).

Total Petroleum-Mid-States Petroleum, Inc., 11/7/89, RF310–214

The DOE issued a Decision and Order concerning an Application for Refund filed by Mid-States Petroleum, Inc., a petroleum products reseller. Mid-States sought a portion of the settlement fund obtained by the DOE through a Consent Order entered into with Total Petroleum, Inc. Since Mid-States claimed a refund in excess of $5,000, the firm was required to demonstrate that it was injured by Total's alleged overcharges. After a thorough evaluation of the injury documentation submitted by Mid-States, the DOE granted the firm a refund of $75,438 ($62,464 principal and $12,974 interest).

William Renz, Four Seasons Amoco, Inc., R–D Sunoco, Alford L. Flanagan, 11/7/89, RF272–49644, RF272–49653, RF272–49696, RF272–49773

The DOE issued a Decision and Order denying the applications of four retailers of refined petroleum products in the crude oil subpart V proceeding. Because the applicants failed to demonstrate that they were injured due to crude oil overcharges, they were found to be ineligible for a crude oil refund. Accordingly, the Applications for Refund were denied.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	No. of applicants	Total refund
Briley Construction Co., et al.	RF272-26026	11/9/89	12	$31,978

DISMISSALS

Name	Case No.
B. Bruce Bish & Son	RF304-10283
Ben Glaser's Service Station, Inc	RF272-40
Brady's Exxon Service	RF307-2007
Cannon's Grocery	RF300-7356
Emmet C. Wever	RF307-8354
Felton Enco	RF307-8300
Gillinghan/Jones, Inc	RF304-10022
John's Sales & Service	RF300-7734
Moffett's Gulf Service Station	RF300-7350
Pump and Pannry Shell	RF315-0277
Skyway Shell	RF315-1762
Wheaton Esso	RF307-8391
Young Oil Company	RF300-10233
Young's Drive In 2	RF307-2004

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, Monday through Friday, between the hours of 1 p.m., and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 8, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-6002 Filed 3-14-90; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of January 1 Through January 5, 1990

During the week of January 1 through January 5, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

The Digital Valve Co., 1/3/90, LFA-0009

The Digital Valve Company filed an Appeal from a partial denial by the Idaho Operations Office of a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that some of the documents which were withheld under exemption 4 were properly withheld, and remanded the other documents to the Idaho Office for further consideration. Important issues that were considered in the Decision were: (i) Whether a submitter's fixed price cost proposals came within exemption 4; (ii) whether the authorizing official had adequately articulated his reasons for withholding the material; and (iii) whether the DOE's consultation with the submitter of the document was improper.

Refund Applications

A&I Fuel Corp. et al., 1/4/90, RF272-23430, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by retailers in the crude oil Subpart V proceeding. Because the applicants failed to demonstrate that they were injured due to crude oil overcharges, they were found to be ineligible for crude oil refunds. Accordingly, the Applications for Refund were denied.

Combustion Engineering, Inc., 1/2/90, RF272-47500

The DOE issued a Decision and Order denying an Application for Refund in the Subpart V Crude Oil refund proceeding. Since Combustion Engineering, Inc. previously released its rights to all other crude oil refunds by signing the Waiver and Release required for its Stripper Well Surface Transporters claim, the DOE determined that Combustion Engineering, Inc. was not eligible for a refund in this proceeding. Accordingly, the Combustion Engineering Application was denied.

Duininck Companies, 1/4/90, RF272-12349; RD272-12349

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Duininck Companies, a highway and heavy construction contractor. In reaching its determination, the DOE rejected objections to the applicant's claim submitted by a group of States and denied the States' Motion for Discovery. The DOE held that industry-wide data, with no particular reference to the applicant, is insufficient to rebut the preseumption of injury for individual end-users. The DOE also stated that the mere contention that an industry had the ability to pass through overcharges is not convincing evidence that a particular claimant was likely, in fact, to have passed through the overcharges. Accordingly, Duininck was granted a refund of $119,445.

Exxon Corp. Porterfield's Exxon, et al., 1/2/90, RF307-2156, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Exxon special refund proceeding. All of the applicants were resellers of petroleum products purchased directly from Exxon during the consent order period. Three of the applicants disagreed with the gallonage information recorded on their purchase volume printouts prepared by Exxon and submitted alternative gallonage figures which they requested the OHA accept in lieu of the Exxon figures. The OHA agreed to accept two of the applicants' alternative figures because they were based upon the applicants' actual records from the consent order period. The remaining applicant submitted alternative figures for its diesel fuel purchases from 1977 through 1981. Because diesel fuel was decontrolled effective July 1, 1976, no overcharges could have occurred and accordingly, the DOE denied its claim for a refund for these purchases. The DOE determined that each of the applicants was eligible to receive its full allocable share. The sum of the refunds granted to the seven applicants was $7,707, including $1,557 in accrued interest.

Gannett Co., Inc., 1/5/89, RF272-23888, RD272-23888

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to the Gannett Company, Inc., based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Gannett, a firm engaged in publishing, broadcasting, and advertising, demonstrated the volume of its claim by consulting contemporaneous records. Gannett was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of States and Territories filed Objections to Gannett's application, contending that the firm was not injured because it showed an increase in profits during the price control period. The DOE found the States' objections to be without merit. Accordingly, the DOE granted Gannett a refund of $30,634.

Greif Board Corp., 1/4/90, RF272–47519

The DOE issued a Decision and Order denying an Application for Refund filed by the Greif Board Corp., a wholly owned subsidiary of Greif Bros. Corporation, in the Subpart V crude oil refund proceeding. Because the parent entity Greif Bros. Corporation had on behalf of itself and all of its affiliates previously waived all rights to other crude oil refunds by signing the Waiver and Release required for its Stripper well Surface Transporters claim, the DOE determined that Greif Board Corp. was not eligible for a refund in this proceeding. Accordingly, the refund application of Greif Board Corp. was denied.

Gulf Oil Corp.,/W.C. Esp, Inc., Volkmann Oil Corp., 1/4/90, RF300–10625; RF200–10632

The DOE issued a Decision and Order concerning Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by W.C. Esp. Inc., and Volkmann Oil Corporation. The applications were approved under the small claims presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $2,046.

Harlan Hartley, 1/5/90, RF272–18

The DOE issued a Supplemental Order adjusting the refund amount granted to Harlan Hartley (Hartley) in David Wickes, *et al.*, 19 DOE ¶ _____ Case Nos. RF272–70600, *et al.*, (July 3, 1989). As a result, Hartley received a supplemental refund of $160.

Milan's Standard Service, et al., 1/3/90, RF272–75114, et al.

The DOE issued a Decision and Order concerning 16 Applications for Refund filed in the Subpart V crude oil special refund proceeding. Each applicant was either a reseller or a retailer during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were ineligible for a crude oil refund and the Applications were denied.

Standard Oil Co. (Indiana)/Alabama, 1/2/90, RM 251–162

The DOE issued a Decision and Order granting a Motion for Modification filed by the State of Alabama in the Standard Oil Co. (Indiana) special refund proceeding. Alabama requested a total of $640,750 to expand an existing program and develop two new ones. Alabama will expand its existing Urban and Rural Mass Transportation Program which supports the administration and implementation of mass transportation, such as van pools and ridesharing. Alabama will also implement a Transportation Planning Program, which coordinates government efforts to support mass transportation efforts. In addition, Alabama will inaugurate a Passenger Rail Service from Birmingham to Mobile. This program encourages energy conservation by providing a fuel efficient and cost-effective alternative to automobiles. The DOE found that these programs would provide restitution to injured petroleum consumers by reducing their transportation costs.

Sutton's Exxon, RF272–52662; Jerry's Shell, 1/3/90, RF272–54232

The DOE issued a Decision and Order denying two Applications for Refund filed by retailers of refined petroleum products in the subpart V crude oil refund proceeding. The denial was based on the fact that the claimants did not establish that they were injured by crude oil overcharges.

Total Petroleum, Inc./Joslin Tire Service, et al., 1/3/90, RF310–112, et al.

The DOE issued a Decision and Order concerning five Applications for Refund in the Total Petroleum, Inc., Special Refund Proceeding. The claims of three of the applicants were less than the small purchasers refund ceiling of $5,000, while the remaining two applicants elected to accept 40% of their allocable shares or $5,000, whichever was greater. As a result, none of the claimants were required to make a detailed demonstration of injury. Applying the criteria established in the Total proceeding, the DOE granted refunds of $53,385, including $9,546 in accrued interest.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Berman and Sons, Inc.	RF272-45103	1/5/90
Bing Construction Co. of Nevada.	RF272-51449	1/5/90
Crown Central Petroleum Corp./ Jefferson Ave. Crown.	RF313-312	1/2/90
Exxon Corp./Ryan Dewitt Corp., et al.	RF307-7899	1/2/90
Guido Teichner	RF272-45533	1/2/90
Gulf Oil Corp./ Carter's Gulf.	RF300-9768	1/4/90
Hobcaw Gulf	RF300-9769	
Gulf Oil Corp./Land O'Lakes, Inc.	RF300-9196	1/3/90
Gulf Oil Corp./Plaza Gulf, et al.	RF300-8814	1/3/90
Gulf Oil Corp./Preston Parsons, Inc. et al.	RF300-5038	1/4/90
Gulf Oil Corp./S.A. Mars, Jr., Inc.	RF300-5320	1/5/90
Gulf Oil Corp./Shuh Fuel & Supply.	RF300-5086	1/4/90
Gulf Oil Corp./W. E. Beckham, Jr.	RF300-5106	1/5/90
Hugh E. Cameron, et al.	RF272-42049	1/5/90
National Serv-All, Inc. et al.	RF272-47508	1/2/90
Roscommon County Road Commission.	RF272-44334	1/2/90
Stathatus & Co. Ltd. et al.	RF272-22193	1/4/90
Wyoming Concrete, Inc.	RF272-44232	1/4/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Apollo Oil Company	RF300-9419
Chrysler Corporation	RF272-74541
D&J Exxon Service Center	RF272-61568
Rosner Brother's Arco #2	RF304-9184
Rosner Brother's Arco #3	RF300-9185
17-25 215 Street Pwmers, Inc.	RF272-45107

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 8, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–6003 Filed 3–14–90; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of January 8 Through January 12, 1990

During the week of January 8 through January 12, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Franc Pajek Co., 1/9/90, LEA–0015

On December 11, 1989, the Franc Pajek Company (Pajek) filed a Motion for Reconsideration of a Decision and

Order issued to it on November 14, 1989 by the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). In that Decision the OHA denied Pajek's Appeal from a denial by the Assistant Manager for Administration of the DOE San Francisco Operations Office. The Assistant Manager had denied a request pursuant to the Freedom of Information Act (FOIA) for a copy of all of the bids submitted in the Lawrence Livermore National Laboratory's Labor only Contract RFQ #5724900A. The denial was based upon the conclusion that the requested material was confidential commercial or financial information within the purview of FOIA Exemption 4. In considering the Motion for Reconsideration, the DOE found that Pajek had not demonstrated the existence of any changed circumstances or an error that would warrant a change in its Decision to withhold bid information. Accordingly, the DOE denied Pajek's Motion for Reconsideration.

Robert E. Caddell, 1/12/90, LEA-0011

On December 20, 1990, Robert E. Caddell (Caddell) filed an Appeal from a determination issued to him on October 20, 1989 by the Inspector General (IG) of the Department of Energy (DOE). In that determination, the IG partially denied Caddell's request for information filed pursuant to the Freedom of Information Act (FOIA). Specifically, the IG withheld the information on the grounds that the documents sought by Caddell fell within Exemptions 6 and 7(C) of the FOIA, and Exemptions (j)(2) and (k)(2) of the Privacy Act. In considering the Appeal, the DOE found that the withheld materials were part of the law enforcement records of the IG and therefore exempt from the disclosure requirements of the Privacy Act and the FOIA. Consequently, Caddell's Appeal was denied.

Refund Applications

Atlantic Richfield Co./Texas Eastman Co./Utility Trailer Sales Co., 1/12/90, RF304-10910; RF304-10992

The DOE issued a Supplemental Decision and Order concerning a determination issued to Texas Eastman Company and Utility Trailer Sales on December 7, 1989, in the Atlantic Richfield Company special refund proceeding. The DOE supplemental order concluded that the refund previously granted to Texas Eastman Company did not include accrued interest while the refund granted to Utility Trailer Sales Co. was miscalculated. Accordingly, those refunds were rescinded and the correct refunds granted to the claimants.

Cook Motor Lines, Inc., K&K Transportation Corp., 1/9/90, RF272-7193; RF272-7193; RF272-12307; RD272-12307

The DOE issued a Decision and Order concerning Applications for Refund filed by two motor common carriers in the Subpart V crude oil refund proceeding. A group of States and Territories (the States) objected to the carriers' applications on the grounds that certain ICC fuel surcharge regulations may have enabled the carriers to pass through increased fuel costs. The States argued that this evidence was sufficient to rebut the presumption of injury for end-users and that the DOE should therefore deny the applications. The DOE granted both refund applications, determining that the States had failed to show that the applicants had actually passed through increased fuel costs. The DOE also denied the States' Motions for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut the end-user presumption of injury. The total of the refunds granted in this Decision was $10,780.

Everette Hunter, Inc. 1/9/90, RF272-61007

The DOE issued a Decision and Order denying an Application for Refund filed by Everette Hunter, Inc. in the Subpart V crude oil refund proceedings. The Applicant was a reseller of refined petroleum products during the period August 19, 1973 through January 27, 1981. Hunter did not demonstrate that it was injured by the crude oil overcharges and thus, was ineligible for a crude oil refund.

Exxon Corp./Darrell Wayne Bully, et al., 1/12/90, RF307-4357, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Exxon Corporation special refund proceeding. The applicants purchased directly from Exxon during the consent order period and were either end-users or resellers of petroleum products requesting refunds of less than $5,000. The DOE determined that each was eligible to receive its full allocable share. The sum of the refunds granted to the seven applicants was $8,699, including $1,757 in accrued interest.

Exxon Corp./Vida & Son, Artco Oil, Inc., 1/8/90, RF307-7688; RF307-8783

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased indirectly from Exxon. One applicant, Vida & Son had been supplied by a firm that had been granted an Exxon refund under the medium range presumption of injury. The second applicant, Artco Oil, Inc. was supplied by a firm that did not apply for an Exxon refund. In accordance with prior Decisions, the claims of the applicants were considered under the procedures used to evaluate direct purchase claims. Both applicants were resellers whose allocable share exceeded $5,000. Instead of making an injury showing to receive its full allocable share, each of the applicants choose to accept the larger of $5,000 or 40 percent of its allocable share. The DOE determined that each applicant was eligible to receive a refund of $5,000. The sum of the refunds granted to the two applicants in this Decision is $12,532 ($10,000 principal plus $2,532 interest).

Exxon Corporation/VA Electric and Power Co., 1/12/90, RF307-8636

The DOE issued a Decision and Order concerning an Application for Refund filed by Virginia Electric and Power Company (VEPCO) in the Exxon Corporation special refund proceeding. VEPCO, a public utility, purchased products directly from Exxon, and was found to be eligible to receive a refund equal to its full allocable share. VEPCO certified that it would notify the appropriate regulatory body of any refund received, and would pass through the entire refund to its customers. The sum of the refund granted in this Decision is $619,472 ($494,352 principal plus $125,120 interest).

Exxon Corp./W.V. Shaw, et al., 1/10/90, RF307-1386, et al.

The DOE issued a Decision and Order concerning 68 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was a retailer of Exxon products whose allocable share is less than $5,000. All of the applicants disagreed with the gallonage information recorded on their Exxon volume sheets, and submitted alternative gallonage figures which they requested that the OHA accept either in lieu of or in combination with Exxon's figures. The OHA agreed to accept the applicants' figures because they were taken directly from the firms' actual Exxon invoices or monthly sales records from the consent order period. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is

$68,102 ($54,347 principal plus $13,755 interest).

Guido Teichner, 1/12/90, RA272–20

The DOE issued a Decision and Order rescinding a prior January 12, 1990 Decision and Order and granting a refund of $1,512 to Guido Teichner in the crude oil special refund proceeding. The Applicant was an end-user of petroleum products and thus entitled to a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the crude escrow account. The Decision was based upon purchases of 1,927,222 gallons.

Gulf Oil Corp./Arnold Barfield, 1/11/90, RF300–66; RF300–67; RF300–68; RF300–69; RF300–70; RF300–71

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Energy Refunds, Inc. (ERI) on behalf of Arnold Barfield, a consignee and reseller of Gulf refined products. ERI used an estimate to derive Barfield's consignee gallons. While the OHA accepted ERI's estimation technique, it recalculated the estimate and, under a presumption of injury, granted a refund including accrued interest, of $9,947.

Gulf Oil Corp./Clyde R. Evans, 1/9/90, RF300–10896

On February 14, 1989, the DOE issued a Decision and Order granting a refund of $8,919 to Clyde R. Evans, Case No. RF300–4996. *Gulf Oil Corporation/Clyde R. Evans, et al.*, ¶ 85,640 (1989). Subsequently, Evans submitted additional information substantiating a larger gallonage claim supporting a greater refund. Accordingly, the DOE issued a Supplemental Order granting Evans an additional refund amount of $24,129, including accrued interest.

Herman Stude, 1/8/90, RA272–19

The DOE issued a Decision and Order rescinding a December 21, 1989 Decision and Order issued to Herman Stude in the crude oil special refund proceeding. The Decision rescinded an initial refund of $42.00 and instead disbursed $55.00 to the applicant, reflecting additional gallonage that was not included in the first disbursement. The Applicant was an end-user and entitled a refund equal to its full allocable share, plus accrued interest.

International Financial Corp., 1/11/90, RF272–63047

The DOE issued a Decision and Order denying an Application for Refund filed by the International Financial Corporation (IFC) in the subpart V crude oil refund proceedings. The Applicant was a reseller of refined petroleum products during the period August 19, 1973 through January 27, 1981. IFC did not demonstrate that it was injured by the crude oil overcharges and therefore found to be ineligible for a crude oil refund.

Murphy Oil Corp./E.S. Wright RF309–62; Bejin Oil Co, Inc., 1/10/90, RF309–414

The DOE issued a Decision and Order granting two Applications for Refund in the Murphy Oil Corporation special refund proceeding. E.S. Wright and Bejin Oil Co., Inc. each purchased distillate fuels from Murphy on a regular basis, but purchased motor gasoline from Murphy only sporadically. Each applicant agreed that it had been a spot purchaser of Murphy motor gasoline and, therefore, the portion of each applicant's purchase volume based upon motor gasoline was denied. Wright and Bejin were granted refunds based on their Murphy distillate fuel purchases under the small claims injury presumption, as described in *Murphy Oil Corporation*, 17 DOE ¶ 85,872 (1988). The sum of the refunds granted was $395, including $76.00 on accrued interest.

Murphy Oil Corp./Nuggett Oil, Inc., RF309–632; Ward Petroleum, Inc., 1/9/90, RF309–633

The DOE issued a Decision and Order granting two Applications for Refund in the Murphy Oil Corporation special refund proceeding. Ward Petroleum, Inc. (Ward) was dissolved in 1975 and its assets were sold to Nuggett Oil, Inc. (Nuggett). After considering the claims, it was determined that Nuggett Oil, Inc. and Ward Petroleum, Inc. had enjoyed common ownership during the Consent Order period because (1) the president of Nuggett is the son of Ward's former owner, and (2) the former owner of Ward is active in the operation of Nuggett. Therefore, Nuggett and Ward were considered as a single firm in the application of the appropriate reseller injury presumption, as described in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988). Under the medium-sized reseller injury presumption, Nuggett and Ward were granted a total refund of $6,190, $5,000 in principal and $1,190 in interest) based on purchases of 11,479,672 gallons. This refund was then divided between Nuggett and Ward in proportion to their respective purchase volumes.

New Hampshire Plastics, 1/11/90, RF272–7029

The DOE issued a Decision and Order granting in part an Application for Refund filed by New Hampshire Plastics (NHP) in the Subpart V crude oil refund proceeding. In that Decision, the DOE determined that one of the products purchased by NHP, styrene, could not form the basis for a refund in the crude oil refund proceeding based upon reasoning articulated in *Gulf Oil Corp./HPI*, 19 DOE ¶ 85,498 (1989). The DOE determined that styrene was too remote from crude oil to be considered a covered product. Furthermore, the DOE determined that styrene was not a covered product under the Mandatory Petroleum Price and Allocation regulations and that these regulations had generally distinguished between petrochemicals, such as styrene, and covered petroleum products. The DOE noted that, in general, the producers of petrochemicals, and not the purchaser of petrochemicals, is considered the party eligible for a refund under the end-user presumption. The DOE granted NHP a refund of $105.00 based upon its purchases of eligible products.

Reeves Brothers, Inc., RF272–7714; RD272–7714; Cranston Print Works, Co., 1/11/90, RF272–7980; RD272–7980

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. A group of twenty-eight states and two territories of the United States (the States) filed identical, consolidated pleadings objecting to and commenting on the applications. The only evidence submitted by the States were several textile industry trade journal articles and an affidavit of a consulting economist indicating that textile producers in general were able to pass on any increased energy costs to their customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive a refund. In addition, the Motions for Discovery filed by the States were denied. The sum of the refunds granted in this Decision is $68,104.

Shell Oil Co./The Wemett Corp., 1/8/90, RF315–9769

On November 9, 1989, the Department of Energy granted a refund to the Wemett Corporation in the Shell Oil Company special refund proceeding. *See Shell Oil Co./Gary D. Koch, Inc., et al.*, 19 DOE ¶ 85,677 (1989). That refund was directed to the original owners of the corporation. However, the Wemett name and some of the corporate assets had been sold in 1974, and the purchasers also filed a refund claim based upon the

purchases of the original owners. The DOE rescinded the original refund approval pending resolution of the competing claim. *See Shell Oil Co./The Wemett Corp.*, 19 DOE ¶ 85,790 (1989). In the present case, the DOE found that the right to a refund based upon purchases made prior to the 1974 sale had not been transferred when the corporate name and assets were sold to the present owners. The DOE therefore concluded that a refund of $1,426 should be approved for the prior owners of Wemett.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./ Oesterle Service et al.	RF304-5592	1/12/90
Atlantic Richfield Co./ Temple Oil Co. et al.	RF307-5089	1/10/90
City of Montrose et al.	RF272-24554	1/12/90
Crown Central Petroleum Corp./ Hincher's Crown Bill's Crown.	RF313-315	1/12/90
E.D.G., Inc./Golden Arrow Dairy.	RF311-8	1/11/90
Exxon Corp./Exxon Joe Rodriguez et al.	RF307-883	1/9/90
Getty Oil Co./Jug's Skelly Service.	RF265-2860	1/12/90
Guilford Mills, Inc. et al.	RF272-32335	1/8/90
Gulf Oil Corp./ Buddy's Fairfax Gulf et al.	RF300-95	1/8/90
Gulf Oil Corp./ Herington MSI.	RF300-9633	1/12/90
Herington Gulf	RF300-9634	
Gulf Oil Corp./Howies Oil, Inc. et al.	RF300-5923	1/12/90
Gulf Oil Corp./ Hutcherson's Gulf Service et al.	RF300-8810	1/12/90
Gulf Oil Corp./Morgan Fuel and Heating Co.	RF300-10759	1/9/90
Clark's Gulf Stations	RF300-10760	
Florida Center Gulf	RF300-10773	
Gulf Oil Corp./ Oswego Oil Service Corp. et al.	RF300-9555	1/8/90
Gulf Oil Corp./Service Oil Company.	RF300-7241 RF300-7242	1/9/90
Gulf Oil Corp./ Williams Gulf et al.	RF300-10020	1/12/90
Marlen G. Luber et al.	RF272-37528	1/10/90
New York University	RF272-78431	1/8/90
Shell Oil Co./Peebles Oil Co. et al.	RF315-14	1/12/90
University of Rhode Island et al.	RF272-20526	1/9/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Bartkus Oil Company	KEE-0176
Cajun Electric Power Cooperative, Inc.	RF314-20
City of Titusville	RF272-75653
Kenny's Exxon	RF307-903
Milt Mottram	RF272-66344
Pure Energy, Inc.	RF307-9185
Sowell Oil Company	RF300-9377
Steel's Atlantic Service	RF304-5799
Tupper's Exxon	RF307-9341

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 8, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-6004 Filed 3-14-90; 8:45 am]

BILLING CODE 6450-01-M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for the disbursement of $1,250,000, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Meadows Realty Company and San Joaquin Refining Co., Inc. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case Number KEF-0133.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute $1,250,000 that has been remitted by Meadows Realty Company and San Joaquin Refining Co., Inc. to the DOE to settle possible violations of the federal petroleum price and allocation regulations. The DOE is currently holding the funds in an interest bearing account pending distribution.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. through 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585. If commentors express sufficient interest in presenting their views orally, the DOE will convene a public hearing. In the event we determine to hold a hearing, notice will be given in the **Federal Register**.

Dated: March 8, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

PROPOSED DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

March 8, 1990.

Names of Firm: Meadows Realty Company, San Joaquin Refining Co., Inc.

Date of Filing: April 28, 1989.

Case Number: KEF-0133.

On April 28, 1989, the Economic Regulatory Administration (ERA) filed a Petition with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings between Meadows Realty Company (formerly San Joaquin Oil Company), San Joaquin Refining Co., Inc. (hereinafter referred to collectively as San Joaquin) and the DOE. 10 CFR part 205, subpart V.

I. Background

San Joaquin Oil Company (SJOC) was engaged in the refining of crude oil and the sale of refined petroleum products during the period of September 1973 through May 1, 1978. SJOC was a refiner, as that term is defined in 6 CFR § 150.352 and 10 CFR 212.31. SJOC was therefore subject to the price regulations set forth in 6 CFR part 150, subpart L and 10 CFR part 212, subpart E. San Joaquin Refining Co., Inc. (SJRC) acquired all of the assets of SJOC on May 1, 1978, and thereafter engaged in the refining of crude oil and sale of refined petroleum products during the remainder of the regulatory period which ended on January 28, 1981. SJOC and SJOR are hereinafter collectively referred to as San Joaquin. The ERA conducted an audit of San Joaquin's compliance with the Mandatory Petroleum Price Regulations contained in 6 CFR 150, subpart L and 10 CFR part 212 during the period September 1973 through April 1975 (the audit period). As a result of this audit, the ERA issued a Proposed Remedial Order (PRO) to San Joaquin on June 4, 1982 which alleged that San Joaquin overcharged its customers in sales of refined petroleum products during the audit period. Following proceedings before the OHA, the PRO was remanded to the ERA for recalculation of the overcharged amounts. On February 27, 1987 the ERA issued a revised PRO to San Joaquin.

In order to settle and finally resolve all civil and administrative claims and disputes between the DOE and San Joaquin, San Joaquin and the DOE entered into a Consent Order which became final on June 17, 1988. 53 FR 22705 (June 17, 1988). The Consent Order settles the liability of San Joaquin regarding all administrative claims and disputes, whether or not previously asserted, between the DOE and San Joaquin concerning San Joaquin's compliance with the federal petroleum and price allocation regulations during the period September 1973 through January 27, 1981 (the Consent Order period). The Consent Order states that San Joaquin has made no admission nor the DOE any finding that San Joaquin violated any statute or regulation.

Pursuant to the Consent Order, San Joaquin agreed to pay to the DOE the amount of $1,250,000 plus interest from January 1, 1988.[1] The Consent Order funds have been placed in an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. This Proposed Decision and Order sets forth the OHA's tentative plan for distributing these funds to qualified purchasers of San Joaquin's refined petroleum products. Because the procedures set forth in this Decision are in proposed form, no applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of San Joaquin refund applications is authorized. Comments are solicited on these proposed procedures.

II. Proposed Refund Procedures

As we indicated above, the Consent Order settles:

> All civil and administrative claims and disputes, whether or not heretofore asserted, between DOE and San Joaquin concerning San Joaquin's compliance with Federal petroleum price and allocation regulations (as defined herein) during the period September 1973 through January 21, 1981 * * *

Consent Order at ¶ 101. The phrase Federal petroleum price and allocation regulations is defined by Consent Order as:

> All pricing and allocation requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, and all applicable DOE regulations codified in 6 CFR part 150, subpart L, and 10 CFR parts 205, 210, 211, 212 and 213, including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms and reporting and certification requirements regarding such regulations.

Consent Order at ¶ 204. The OHA believes that this language was intended to cover any potential violations by San Joaquin of the regulations governing crude oil as well as refined products. The OHA finds further support for this interpretation because the Consent Order governs the period from September 1973 through January 27, 1981, but, the refined products sold by San Joaquin were all decontrolled by September 1, 1976.[2] Therefore, the Consent Order covers a period extending almost four and one half years after San Joaquin stopped selling controlled refined products. However, the Consent Order does not give the OHA any guidance regarding the proper allocation of the Consent Order funds between refined products and crude oil. The Proposed Consent Order does state that, "[t]he major regulatory area of dispute concerns San Joaquin's pricing of refined petroleum products subject to price controls." 53 FR 15441 at 15441 (April 29, 1988). Accordingly, the OHA believes that it is reasonable to allocate 20 percent of the Consent Order funds to the crude oil pool.

A. Distribution of the San Joaquin Crude Oil Funds

We propose that the San Joaquin crude oil monies, $250,000, plus interest, be disbursed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 FR 27899 (August 4, 1986), using the procedures described in *New York Petroleum, Inc. et al.*, 18 DOE ¶ 85,435 (1988).[3] Up to 20 percent of these funds, $50,000, will be distributed to injured parties in the DOE's subpart V crude oil refund proceeding. Refunds to eligible claimants in that proceeding will be based on a per-gallon refund amount derived by dividing the sum of all crude oil overcharge monies in escrow by the total U.S. consumption of petroleum products during the period of Federal petroleum price controls.[4] The principal volumetric refund amount associated with the San Joaquin crude oil funds is $0.0000001237 per gallon. For further information concerning application procedures in the subpart V crude oil proceeding, *See Texaco Inc.*, 19 DOE ¶ 85,200, *corrected*, 19 DOE ¶ 85.236 (1989).

Under the terms of the MSRP, we propose that 80 percent of the San Joaquin crude oil funds, $200,000, plus interest, as well as any portion of the above-mentioned 20 percent reserve which is not distributed, be divided equally between the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. *E.g.*, *id.* at 88,375.

B. Eligibility for Refunds from the Refined Product Funds

The settlement amount of $1,000,000, plus accrued interest, will be available for distribution to purchasers of San Joaquin's refined petroleum products during the period September 1973 through the date when the specific product claimed was decontrolled. San Joaquin has indicated that it did not sell any controlled refined products after September 1, 1976, the date that gas oils were decontrolled.[5] Accordingly, the OHA believes that August 31, 1976 is the last date that a covered refined product would have been purchased from San Joaquin.[6]

C. Calculation of Refund Amount

We propose opting a volumetric method to apportion the San Joaquin escrow account. We will derive the volumetric figure by dividing the $1,000,000 received from San Joaquin by the total volume of covered products sold by the firm during the period from September 1973 through August 31, 1976. This yields a volumetric refund amount of $.001647 per gallon, exclusive of interest.[7]

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[1] When settlement negotiations were ongoing, San Joaquin paid $1.5 million to the DOE in an interest bearing account to be credited to any liability. As of January 1, 1988 those funds exceeded the amount due to the DOE under the terms of the Consent Order, therefore, $299,361.55, plus interest, was refunded to Meadows Realty Company on July 8, 1988.

[2] *See* Letter from Kevin R. Griffin, Attorney for San Joaquin, to Raymond P. Rayner, Jr., OHA Attorney Advisor (January 12, 1990).

[3] Shortly after issuance of the MSRP, the OHA announced its intention to apply the MSRP in all subpart V proceedings involving alleged crude oil violations and solicited comments concerning the refund procedures. 51 FR 29689 (August 20, 1986). On April 10, 1987, the OHA issued a Notice analyzing the comments and setting forth final procedures regarding applications for crude oil refunds. 52 FR 11737 (April 10, 1987).

[4] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel Supply Company*, 14 DOE ¶ 85,475 at 88,868 n. 4. (1986).

[5] *See* 41 FR 30096 (July 22, 1976).

[6] San Joaquin has indicated that it sold only gas oils, asphalts, residual fuel oils and middle distillates. Therefore, an applicant will not be eligible to receive a refund based upon asphalt purchased after March 31, 1974 because asphalts were decontrolled on April 1, 1974. 39 FR 12214 (April 3, 1974); 39 FR 13805 (April 17, 1974). Residual fuel oils were decontrolled on June 1, 1976. 41 FR 13896 (April 1, 1976). Middle distillates were decontrolled on July 1, 1976. 41 FR 24516 (June 16, 1976).

[7] To compute this figure, we estimated that San Joaquin sold a total of 606,882,802 gallons of covered

Continued

This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of covered products sold by San Joaquin during the consent order period when the refined products that it sold were controlled.[8]

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from San Joaquin during the consent order period when the products claimed were controlled, multiplied by the per gallon volumetric amount for this proceeding. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the San Joaquin refined product funds since the date of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g., Urban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982) (*Urban*).

1. Showing of Injury

We propose that each claimant will be required to document its purchases of San Joaquin's covered products. In addition, we propose to require an applicant to demonstrate that it was injured by the alleged overcharges. In order to demonstrate that it did not subsequently raise its prices and thereby recover the increased costs associated with San Joaquin's alleged overcharges, a claimant will have to show that it maintained banks of unrecovered product costs. We are willing to accept information establishing with reasonable likelihood that a claimant had banks. *Seminole Refining Inc.*, 12 DOE ¶ 85,188 (1985); *See also Bayou State Oil Corp.*, 12 DOE ¶ 85,197 (1985). In order to demonstrate injury, a claimant must also show that market conditions would not permit it to pass through those increased costs to its customers. *E.g., American Pacific International*, 14 DOE ¶ 85,158 at 88,295 (1986).

2. Small Claims Presumption

We also propose to adopt a presumption, as we have in many cases, that purchases seeking refunds of $5,000 or less were injured by San Joaquin's pricing practices. Uban, 9 DOE ¶ 82,541 (1982); *see also Marion Corp.*, 12 DOE ¶ 85,014 (1984). Under this small claims presumption, an applicant seeking a total refund of $5,000 or less will not be requred to make a detailed demonstration of injury. Such an applicant need only document its purchase volume of San Joaquin covered products.

3. End-Users

We propose to adopt the presumption that end-users, i.e. ultimate consumers, whose businesses are unrelated to the petroleum industry, where injured by San Joaquin's alleged overcharges. *Id.* at 88,030; *see also Thornton Oil Corp.*, ¶ 85,112 (1984). We propose that end-users of San Joaquin's refined products need only document their purchase volumes of San Joaquin's covered products to make a sufficient showing of injury.

4. Regulated Firms and Cooperatives

We propose that claimants whose prices for goods and services are regulated by a government agency (such as a public utility), or by the terms of a cooperative agreement, will be presumed to have absorbed the alleged overcharges. Accordingly, such claimants need only submit documentation of the volume of covered products purchased by them, that were used by themselves or, in the case of cooperatives sold to their members in order to receive a full volumetric refund. However, regulated firms or cooperatives will be required to certify that they will pass any refund on to their customers or member-customers, provide us with a full explanation of how they plan to accomplish the restitution, and certify that they will notify the appropriate regulatory body or membership group of their receipt of the refund. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,514 (1986); *see also Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1983). We will not require a public utility seeking a refund of $5,000 or less to submit the above referenced certifications and explanation. Sales of covered products by cooperatives to non-members will be treated in the same manner as sales by other resellers or retailers.

5. Indirect Purchasers

We propose that firms which made indirect purchases of covered San Joaquin products may also apply for refunds. If an applicant did not purchase directly from San Joaquin, but believes that covered products it purchased from another firm were originally purchased from San Joaquin, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of San Joaquin products passed through San Joaquin's alleged overcharges to its own customers. *E.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451 (1986).

6. Spot Purchasers

We propose to adopt the rebuttable presumption that a claimant who made only spot purchases from San Joaquin was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered San Joaquin products. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from San Joaquin. *E.g., Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

7 Applicants Seeking Refunds Based on Allocation Claims

We also recognize that, while the Consent Order makes no allegation of known allocation violations, we may receive claims alleging San Joaquin's failure to furnish petroleum products that it was obligated to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR part 211. Such claims could be based on the Consent Order's broad language regarding the matters settled. *See* section II above. We propose that any such application be evaluated with reference to the standards set forth in subpart V implementation decisions such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88.220 (1982), and refund application cases such as *Mobil Oil Corp./ Reynolds Industries*, 17 DOE ¶ 85,608 (1988) *Marathon Petroleum Corp./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989), action for review pending, CA–3–89–2983–G (N.D. Tex. filed Nov. 22, 1989). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the Consent Order firm and the likelihood that the Consent Order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the DOE's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that San Joaquin may have had to the alleged allocation violation. *E.g., id.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operation with particular reference to the amount of product that it received from suppliers other than San Joaquin. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the amount of San Joaquin allocation violations in general and regarding the specific allocation violation alleged by the claimants. Finally, since the San Joaquin Consent Order reflects a negotiated compromise of the issues involved in an enforcement proceeding against San Joaquin, as well as potential unknown violations, and the Consent Order amount is therefore less than San Joaquin's potential liability, we will pro rate any allocation refunds that would otherwise be disproportionately large in relation to the Consent Order fund. *Cf Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989).

III Distribution of Refunds Remaining after Consideration of All Refined Product Refund Applications

In the event that money remains after all meritorious refund applications have been processed, the funds in the San Joaquin refined products escrow account will be disbursed in accordance with the provisions

products during the period from September 1973 through August 31, 1976.

[8] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

of the Petroleum Overcharge and Distribution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1989)

IV. Conclusion

Applications for Refund in this proceeding should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any of the San Joaquin Consent Order funds, we intend to publicize the distribution process and to provide an opportunity for any potential claimants to file a claim. Comments regarding the tentative distribution procedures set forth in this Proposed Decision and Order should be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Decision and Order in the Federal Register.

It is Therefore Ordered, That:

The refund amount remitted to the Department of Energy by Meadows Realty Company (formerly San Joaquin Oil Company) and San Joaquin Refining Co., Inc. pursuant to the Consent Order finalized on June 17, 1988 will be distributed in accordance with the foregoing Decision.

[FR Doc. 90–6005 Filed 3–14–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–140131; FRL–3733–9]

Access to Confidential Business Information by Computer Based Systems, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Computer Based Systems, Inc. (CBSI), of Fairfax, Virginia, for access to information which has been submitted to EPA under sections 6 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, – Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, –(202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D8–0013, contractor Computer Based Systems, Inc. of 2750 Prosperity Ave., Suite 300, Fairfax, VA will compile information for the Office of Toxic Substances (OTS), Information Management Division (IMD). CBSI's support will include data entry of information to support potential regulation under section 6 of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract number 68–D8–0013, CBSI will require access to CBI submitted to EPA under sections 6 and 8 of TSCA to perform successfully the duties specified under the contract. CBSI personnel will be given access to information submitted under sections 6 and 8 of TSCA. Some of the information may be claimed or determined to be CBI. –

EPA is issuing this notice to inform all submitters of information under sections 6 and 8 of TSCA that EPA may provide CBSI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters and CBSI's facility located at 470 L'Enfant Plaza, Suite 7103, Washington, DC. CBSI has been authorized access to TSCA CBI at CBSI's facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved CBSI's security plan and has found the facility to be in compliance with the manual.

Clearance for access to TSCA CBI under this contract is scheduled to expire on June 30, 1990.

CBSI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: March 9, 1990.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90–5983 Filed 3–14–90; 8:45 am]

BILLILNG CODE 6560–50–D

FEDERAL MARITIME COMMISSION

[Docket No. 90–09]

Matson Navigation Co., Inc. Proposed General Rate Increase of 3.6 Percent Between United States Pacific Coast Ports and Hawaii Ports; Order of Investigation and Hearing

On January 5, 1990, Matson Navigation Company, Inc. ("Matson") filed a general rate increase of 3.6 percent in its Tariffs FMC–F Nos. 13, 26, 29, 30 and 31, on commodities moving in the Pacific Coast/Hawaii trade ("Trade"), to become effective March 10, 1990.

Protests were filed by the State of Hawaii ("Hawaii") and jointly, by Tobias E. Seaman d/b/a Tobias Christmas Trees, and the National Association of Shippers, Consignees and Consumers for Maritime Affairs ("Seaman"). Matson submitted a reply to those protests. On February 28, 1990, the Commission heard oral argument on whether this increase should be investigated.

Matson furnished financial and operating data in support of the increase, showing actual results for the twelve-month period ending October 31, 1989 ("Historical Year"), and projected results for the twelve-month period ending March 31, 1991 ("Test Year").

For the Historical Year, Matson reported a return on rate base of 11.88 percent. For the Test Year, Matson initially projected a return on rate base of 9.95 percent, but subsequently adjusted that projection downward to 8.94 percent, in response to an issue raised in Hawaii's protest.[1] The Test Year projections are based generally upon Matson's 1990 Operating Plan, adjusted for the Test Year period.

Hawaii's protest is based on assertions that: (1) Matson has understated Test Year revenues because it failed to show significant growth in cargo volumes and to take into account continuing growth in the Hawaiian economy; (2) Matson's recent and proposed capital outlays exceed the amount necessary to meet ordinary service requirements; (3) the factors used by Matson to make allocations to the Trade are inappropriate; (4) the proposed rate of return is inappropriate; and (5) Matson's calculation of depreciation for the vessel MATSONIA is improper. Seaman's protest centers on the issue of Matson's rate of return.

Having reviewed the financial and operating data submitted by Matson, the protests of Hawaii and Seaman, Matson's reply to those protests, and the parties' contentions at oral argument, the Commission is of the opinion that Matson's proposed general rate increase should be investigated to address the following specific issues:

1. *Projected Revenue.* Matson initially projected revenue of $255 million for the Test Year, but then adopted Hawaii's projection of $264 million in response to Hawaii's protest. The Commission questions the reliability of projections so easily changed. A difference of $9 million in revenue is roughly equivalent to the revenue that will be generated by

[1] In its reply to Hawaii's protest, Matson adopted Hawaii's revenue projection. However, Matson also adjusted its rate base to include the addition of the vessel CAGUAS and adjusted its expenses to reflect the operation of that vessel. This accounts for the downward adjustment in Matson's Test Year rate of return from 9.95 percent to 8.94 percent.

the rate increase sought by Matson in the instant filing.

2. *The Vessel CAGUAS.* In order to carry the additional cargo projected by Hawaii, and now by Matson, the carrier proposes adding the CAGUAS, a newly-acquired vessel, to its rate base, and adding the expenses of that vessel to its income statement for the Test Year. Whether it is appropriate to reflect this vessel and its expenses in the Test Year, and, if so, for what period of time and in what amounts, are issues that should be determined.

3. *The Vessel MATSONIA.* The roll-on/roll-off vessel MATSONIA is operated by Matson under a twenty-five year lease, which Matson capitalized as part of the rate base in the Trade, in accordance with 46 CFR 552.6(b)(9). A new mid-body was added to the vessel to increase its capacity, and the "stretched" vessel returned to the Trade in 1987, with only eleven years remaining on the twenty-five year lease. The entire cost of the mid-body addition is being depreciated as a leasehold improvement over these remaining eleven years of the lease, although the useful life of the improvement may be longer than eleven years. Proper treatment of this leasehold improvement in Matson's financial statements should be determined in this proceeding.

4. *Allocation of Expenses to the Trade.* Hawaii contends that Matson's practice of carrying eastbound automobiles in containers, rather than in garage stowage on roll-on/roll-off vessels, distorts the cargo-cube relationship and results in a disproportionately large allocation of expenses to the Trade. The Commission's rules at 46 CFR Part 552 prescribe that the outside dimensions of containers be used for allocating expenses to a trade when cargo is carried in containers. However, the actual dimensions of automobiles are used for allocating expenses when those automobiles are carried in garage stow. 46 CFR 552.5(h). This proceeding should address whether, pursuant to 46 CFR 552.1(d), it is necessary to employ other methods of allocation to achieve a fair and reasonable result in these particular circumstances.

5. *Rate of Return.* Resolution of the foregoing issues may impact on Matson's projected rate of return in the Trade. In addition, the Commission's General Order 11, 46 CFR part 552 ("G.O. 11"), provides that the reasonableness of a carrier's rate of return will be based on a comparative analysis of the carrier's projected rate of return on rate base with the rate of return on total capital earned by comparable U.S. corporations ("benchmark rate of return"). Issues have been raised regarding the calculation of the benchmark rate of return and the need for adjustments to account for current trends in rates of return, the cost of money and relative risk. Determinng a projected rate of return for Matson in the Trade, as well as a fair rate of return, are critical elements in adjudicating the reasonableness of Matsons' proposed increase in rates in this proceeding. 46 CFR 552.1(b).

6. *Overinvestment in the Trade.* Hawaii contends that Matson's investment in the Trade exceeds the amount necessary to meet ordinary service requirements and alleges that such investment is designed to ward off actual and potential competitors. Matson's position is that its investment is a direct response to customer needs and that it does not have excess capacity in the Trade. Hawaii has failed to indicate, and it is not obvious to us, how the overinvestment issue relates to G.O. 11 methodologies. Nevertheless, the Commission is including as an issue in this proceeding whether Matson provides excess capacity and the point at which any such excess capacity becomes a burden on ratepayers in the Trade and, therefore, should be removed from the rate base. The purpose is to provide Hawaii the opportunity to go forward and present whatever evidence and argument it may have that bears on this issue.

Therefore, it is ordered, That pursuant to the authority of section 22 of the Shipping Act, 1916, 46 U.S.C. app. 821, and sections 3 and 4 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 845 and 845a, an investigation is instituted to determine whether the general rate increase of 3.6 percent shown in the following tariff supplements filed by Matson on January 5, 1990, is just and reasonable:

FMC–F No. 13—16th Revised Page 24
FMC–F No. 26—Supplement No. 1
FMC–F No. 29—Supplement No. 1
FMC–F No. 30—Supplement No. 1
FMC–F No. 31—Supplement No. 1

It is further ordered, That in determining whether the subject increase is just and reasonable, each of the issues set forth in the preamble to this order shall be addressed; [2]

It is further ordered, That Matson Navigation Company, Inc. is named respondent in this proceeding;

It is further ordered, That the State of Hawaii, Tobias Christmas Trees, and The National Association of Shippers, Consignees and Consumers for Maritime Affairs are named protestants and are made parties to this proceeding;

It is further ordered, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure, 46 CFR 502.42, the Director, Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the presiding Administrative Law Judge;

It is further ordered, That the provisions of Rule 67(d)(1) of the Commission's Rules of Practice and Procedure, 46 CFR 502.67(d)(1), are waived for this proceeding;

It is further ordered, That the presiding Administrative Law Judge shall, at his discretion, direct all parties to attend a prehearing conference to consider:

1. Simplification of issues;
2. Identification of issues which can be resolved readily on the basis of documents, admissions of facts, or stipulations;
3. The need for filing of testimony and exhibits together with underlying workpapers;
4. Identification of issues which require an evidentiary hearing;
5. Limitation of witnesses and areas of cross-examination should an evidentiary hearing be necessary;
6. Requests for subpoenas; and
7. Other matters which may aid in the disposition of the issues.

It is further ordered, That any hearing in this proceeding shall be completed by May 8, 1990, the initial decision of the presiding Administrative Law Judge shall be submitted in writing to the Commission by July 6, 1990, and the final decision of the Commission shall be issued by September 5, 1990;

It is further ordered, That during the pendency of the investigation, Respondent will serve the presiding Administrative Law Judge and all parties of record with notice of any tariff changes affecting the material under investigation at the same time such changes are filed with the Commission;

It is further ordered, That notice of this Order be published in the Federal

[2] While the presiding Administrative Law Judge is required to explain his disposition of each of these issues, this does not mean that each must be the subject of an evidentiary hearing. For example, after the filing of prehearing statements, the presiding Administrative Law Judge may determine that an evidentiary hearing on one or more of these issues would be unnecessary. Therefore, the presiding Administrative Law Judge is authorized to dispose of the issues in any fashion deemed appropriate.

Register and a copy be served upon all parties of record;

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

Finally, it is ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-5890 Filed 3-14-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Commonwealth Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 3, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Commonwealth Financial Corporation,* Indiana, Pennsylvania; to acquire 100 percent of the voting shares of Peoples Bank and Trust Company, Jennerstown, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *CNB Bancorp,* Attica, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Central National Bank & Trust Company, Attica, Indiana.

2. *First Colonial Bankshares Corporation,* Chicago, Illinois; to acquire 100 percent of the voting shares of York Bancshares, Elmhurst, Illinois, and thereby indirectly acquire York State Bank and Trust Company, Elmhurst, Illinois.

3. *Valley Bancorporation,* Appleton, Wisconsin; to acquire 100 percent of the voting shares of Valley Bank, Milwaukee, Wisconsin, a *de novo* bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Rocky Mountain Bancorporation, Inc.,* Billings, Montana; to merge with Whitehall Bancorporation, Inc., Whitehall, Montana, and thereby indirectly acquire The Whitehall State Bank, Whitehall, Montana.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Olney Bancshares, Inc.,* Olney, Texas; to acquire 100 percent of the voting shares of The Farmers National Bank of Seymour, Seymour, Texas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Central Bancorporation,* (formerly M.O. Packard Investment Company), Provo, Utah; to acquire 70.2 percent of the voting shares of Central Bank and Trust Company, Provo, Utah.

2. *ENB Holding Company,* Escondido, California; to acquire 100 percent of the voting shares of Temecula Valley National Bank, Temecula, California, and thereby indirectly acquire Temecula Valley National Bank, Temecula, California.

Board of Governors of the Federal Reserve System, March 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-5926 Filed 3-14-90; 8:45 am]

BILLING CODE 6210-01-M

MidAmerican Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *MidAmerican Corporation,* Prairie Village, Kansas; to acquire The Kansas Trust Company, Prairie Village, Kansas, and thereby engage in (i) trust company activities pursuant to § 225.25(b)(3); and providing investment or financial advice and furnishing general economic information and advice to commercial banks pursuant to § 225.25(b)(4); and providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 9, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-5927 Filed 3-14-90; 8:45 am]
BILLING CODE 6210-01-M

J.P. Morgan & Company Inc.; Applications To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that the Board has determined to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *J.P. Morgan & Company Incorporated*, New York, New York; to engage *de novo* through its subsidiary, J.P. Morgan Securities Inc., New York, New York, in acting as investment or financial advisor to the extent set forth in § 225.25(b)(4); and providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Such activities would also include providing advisory services for nonaffiliated financial and nonfinancial institutions in connection with (i) merger, acquisition, divestiture, restructuring, reorganization and financing transactions (including the provision of valuation services, fairness opinions and ancillary services or functions incidental to the foregoing); and (ii) the structuring and arranging of interest rate swaps, interest rate caps and similar transactions. (*Signet Banking Corporation*, 73 Fed. Res. Bull. 59, (1987).

Board of Governors of the Federal Reserve System, March 9, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-5928 Filed 3-14-90; 8:45 am]
BILLING CODE 6210-01-M

Natan Roberto Rok, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 29, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Natan Roberto Rok*, Miami Beach, Florida; to acquire an additional 10 percent of the voting shares of TransAtlantic Bank, Miami, Florida, for a total of 20.99 percent.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Trans Financial Bancorp Employee Stock Ownership Plan*, Bowling Green, Kentucky; to acquire an additional 9.7 percent of the voting shares of Trans Financial Bancorp, Inc., Bowling Green, Kentucky, for a total of 24.9 percent, and thereby indirectly acquire The Citizens National Bank of Bowling Green, Bowling Green, Kentucky, and Citizens Bank and Trust Company, Glasgow, Kentucky.

Board of Governors of the Federal Reserve System, March 9, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-5929 Filed 3-14-90; 8:45 am]
BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[G-90-2]

Delegation of Authority to the Secretary of the Treasury

Pursuant to the authority vested in me by section 3726 of title 31, United States Code, I have determined that it is both cost-effective and in the public interest to delegate authority to the Secretary of the Treasury to conduct a prepayment audit of transportation bills relating to the movement of freight, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101-41, and amendments thereto. This prepayment audit will be conducted at the Internal Revenue Service Headquarters, 1111 Constitution Avenue NW., Washington, DC.

The Secretary of the Treasury may redelegate this authority to any officer, official, or employee of the Internal Revenue Service.

The Secretary of the Treasury shall notify GSA in writing of these redelegations. This delegation is effective upon publication in the **Federal Register.**

Dated: March 6, 1990.
Richard G. Austin,
Acting Administrator of General Services.
[FR Doc. 90-5922 Filed 3-14-90; 8:45 am]
BILLING CODE 6820-24-M

Actual Subsistence Expense Reimbursement in Presidentially Declared Disaster Area Surrounding Charleston, SC

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of GSA Bulletin FTR 1.

SUMMARY: Federal Travel Regulation Amendment 7 (41 CFR part 301–8) (55 FR 2379, January 24, 1990) permits the Administrator of General Services to establish, upon request from the Federal Emergency Management Agency (FEMA), a higher actual subsistence expense rate ceiling for all official travel to a Presidentially declared disaster area. These special ceilings may be set by GSA's Administrator at a rate up to 300 percent of the maximum per diem rate applicable to a specific disaster area. This policy change was prompted by a request from the Director of FEMA citing unprecedented financial hardships imposed on Federal travelers unable to obtain affordable lodging in the Charleston, SC area following Hurricane Hugo in September 1989. The Administrator has established such a special rate in GSA Bulletin FTR 1 for the South Carolina counties designated therein that comprise the Hurricane Hugo Presidentially declared disaster area.

Dated: March 2, 1990.

Stanley M. Duda,

Acting Assistant Commissioner for Transportation and Property Management.

[FR Doc. 90–5923 Filed 3–14–90; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Disaster Relief Assistance Grants for Drug Abuse Treatment

OFFICE: Office for Treatment Improvement, ADAMHA, HHS.

ACTION: Program announcement for disaster relief assistance grants for drug abuse treatment.

INTRODUCTION: The Office for Treatment Improvement (OTI) is announcing a program to assist States and communities in meeting emergency needs for drug abuse treatment where the impact of the disaster has created a health emergency. Grant awards will be made under authority of section 311(c)(2) of the Public Health Service Act which permits awards for temporary assistance, not to exceed 6 months.

Eligibility

Eligibility for these awards is limited to a single State ageny for drug abuse (as designated by the governor in writing) in affected States to assist in meeting emergency drug treatment needs in particular sites which have been declared national disaster areas by the President. For purposes of this announcement, State is defined as the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the successor States to the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Competition for these awards is limited to States because of the need to ensure coordination of drug abuse disaster relief efforts with the ongoing Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant funded activities which are administered by the State, State activities for general disaster relief efforts, disaster relief support from the Federal Emergency Management Agency (FEMA), and other related programs. Also, since OTI awards will be of short duration, there is a need for State involvement to help ensure that treatment service need continue to be met after Federal support terminates.

Purpose and Objectives

The purpose of this program is to: (1) Assist States and communities in restoring drug abuse treatment services following a disaster; and (2) meet drug abuse related emergency needs of disaster victims, (e.g., ensuring that drug abuse treatment services continue to be accessible to patients in treatment and that patients are retained in treatment despite disaster-related disruptions); (3) deal with increased drug abuse as a result of the disaster; and (4) provide necessary coordination to ensure that special mental health, health or social service needs integral to the treatment of drug abusers in treatment related to the disaster are met. In other words, support is directed at meeting emergency drug abuse treatment needs directly connected with the disaster.

Support will be provided only to meet short term needs, unless the State can make a commitment to pick up funding of an urgently needed service or activity likely to be ongoing after the expiration of the 6 month statutory limit of the OTI award. OTI funds may not be used to establish entirely new treatment programs (i.e., that were not in existence prior to the disaster), construct facilities or supplant existing resources.

Support will be provided for coordination of drug abuse and mental health services. OTI will not provide funds for the delivery of mental health services since the authority for such services can be found in Section 416 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended). This authorizes the President "to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggrevated by such major disaster or its aftermath". There are two types of support: (1) Immediate Services grants; and (2) Regular Services Grants. Monies for both types of support come from the FEMA. FEMA and the National Institute of Mental Health (NIMH) maintain an interagency agreement regarding administration of this program. NIMH assists in determining applicant eligibility and provides guidance and technical assistance. For information about this program, contact Dr. Brian Flynn, Acting Chief, State Planning and Human Resource Development Branch, Division of Education and Service Systems Liaison, NIMH. Telephone: (301) 443–4735.

Under the Stafford Act, FEMA may also grant assistance for the repair and renovation of public and certain non-profit facilities necessary to restore drug abuse treatment services disrupted by the disaster. Owners and operators of such facilities should contact the State Office of Emergency Services, or appropriate Agency. States applying for disaster relief assistance under this announcement are encouraged to link up with relevant FEMA programs to: (1) Share information; and (2) make appropriate referrals.

Since OTI support is limited to short term relief (6 months) and only limited funds are available from OTI, it is expected that States will request support only for their highest priority needs and for activities which cannot otherwise be funded. Accordingly, States are expected to do a services needs assessment and determine availability of other funding to meet emergency needs before preparing an application for OTI funding. While funds are being provided through the State, they are intended primarily for use at the local level.

Program Description

This program is intended to provide "stop gap" assistance to help communities deal with disrupted drug abuse services and increased drug abuse problems arising from the occurrence of a disaster. Within this framework, support may be requested

for activities which include, but are not limited to, the following kinds of needs:

• Providing outreach services to identify persons in need of drug abuse treatment following the disaster (e.g., hiring and/or training indigenous workers to do case-finding in the community).

• Ensuring retention of patients in drug abuse treatment programs post-disaster. Specific activities could involve training and/or hiring of additional staff to work with patients and their families, employers or others to ensure continued participation of drug abusers in treatment and aftercare despite disruption in their lives and communities resulting from the disaster. Another approach might be leasing of mobile treatment or temporary shelter units to make treatment more accessible during the post disaster period.

• Providing coordination of mental health and drug abuse treatment services to help drug abusers deal with the stress associated with the disaster. This might include, e.g., in-service training for drug abuse treatment staff to help them identify drug abuse patients in need of mental health services, coordination with mental health providers to provide appropriate referrals, or hiring of temporary staff to provide ancillary mental health services within drug treatment programs.

• Ensuring coordination within the drug abuse treatment system and between the drug abuse system and other health and social service agencies, to help maintain retention of drug abusers in treatment during the post disaster period.

Applicants are expected to propose approaches that have a sound conceptual basis consistent with the state of the art of practices, knowledge and theories in the drug abuse treatment field.

In the development of an application, States should be cognizant of the following special concerns:

• Population groups with special needs, e.g., adolescents, minorities, and the socio-economically disadvantaged

• Programs should be adapted to local needs, including special ethnic, cultural, and geographic considerations.

Application Requirements

In order to receive an award under this announcement, the State and local communities must conduct a needs assessment of disaster related problems in the drug abuse treatment system. Potential applicants may request technical assistance from OTI staff to complete this assessment.

The State and local communities are expected to consider all current and potential sources of funding to meet disaster related needs (e.g., the ADMS Block Grant, State funds, and other available funding sources). OTI funding may be requested only to meet needs for emergency services which cannot otherwise be funded.

A State may submit only one application for assistance in response to a particular disaster, even if multiple communities are affected. However, that application may address the needs of all communities falling within the particular area declared a national disaster by the President.

It is critical that the local communities collaborate with the State in the preparation of the application and in carrying out the proposed activities. This must be documented in the application.

Applications for OTI grants must be submitted within 90 days of the declaration of a disaster area by the President, or within 60 days of the issuance of this announcement for disasters occurring prior to issuance.

Support may not be requested from OTI for addressing mental health problems, except as they co-occur in individuals with primary drug abuse problems. Please see information regarding mental health services in the Purpose and Objectives section.

Application Submission And Procedures

Applications must be submitted on the PHS 5161–1 form (rev. 3/89). Forms are available from Office for Treatment Improvement, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857.

In item number 9 on the face sheet of the PHS 5161–1 form, write in the title of this program announcement: Disaster Relief Assistance Grants for Drug Abuse Treatment.

The following guidelines replace the general instructions for the program narrative in the PHS 5161–1 form:

(1) Include a "Background" section, with information on the disaster including type, time, place, and duration. Also, include a brief description of the geographic areas to be covered in the proposed project and the types of activities for which support is requested.

(2) Include a section labelled "Needs Assessment" which describes the assessment, done jointly by the State and the local communities, of the disruptions in the drug abuse treatment system, estimated increase in drug abuse incidence and anticipated special disaster related problems among the drug abusing population. Also, included a brief description of treatment programs in place in the community and the gaps in their ability to meet emergency needs. Include objective data wherever possible. A description of the needs assessment process also should be provided, including the role of State and local personnel in carrying out the assessment. Letter indicating agreements among the State, local community government officials and participating local drug abuse treatment providers must be included as appendices to the application.

(3) Include a section labelled "Program Description and Approach" which describes the objectives to be addressed and the specific approaches that the applicant proposes to achieve these objectives. This plan should build on the needs assessment and include specific details about populations to be served, the types of services to be provided, the strategies for dealing with problems in the drug treatment system, and the manner in which available resources in the community will be mobilized to assist. As an appendix to the application, supply the name of each service provider to be involved in the project, along with a brief description of their involvement.

(4) Include a section on "Project Organization and Staffing." Describe how the proposed activities under the OTI grant would be organized, lines of responsibility and respective roles of State and local community personnel. Biographical information should be included as appendices to the application for all key personnel.

Also, include staffing plans for specific components of the project proposed for OTI support, including designation of staff to be supported from OTI.

(5) In a "Resources/Budget" section, describe how existing resources are unable to meet the needs documented in the assessment. Provide data on commitments from other sources (e.g., State funds) to meet emergency drug treatment needs, along with information on what costs are proposed for funding by OTI. Provide a clear justification for each proposed expenditure, and indicate priorities for funding since OTI may not be able to support all requested costs. The budget must be clearly tied to the program narrative.

The narrative for this grant application may not exceed 20 pages.

As an attachment to the grant application, include letter(s) from the local community authorities indicating their cooperation in preparation of this application and plans for continued collaboration throughout the course of the project.

The designed original and two copies of the form PHS 5161–1 should be sent

to: Office for Treatment Improvement, Rockwall II, 10th Floor, 5600 Fishers Land Rockville, Maryland 20857.

Review Process and Criteria

Grant applications will be subject to objective review by groups of experts in the drug treatment and related fields. This review will be to determine whether the application has technical merit, in accordance with the criteria specified below.

Review Criteria

- Adequacy of the needs assessment, with particular emphasis on identification of emergency drug abuse treatment needs as a result of the disaster which cannot be met with resources outside of this grant program.
- Clarity and relevance of the proposed objectives of the project to the needs assessment and the goals of the OTI program as stated in this announcement.
- Relevance and appropriateness of the proposed approach to meeting the types of needs identified by the assessment.
- Feasibility of the program plans.
- Appropriateness of any proposed services in terms of the target populations (e.g., ethnic, cultural, and age considerations) and in terms of state of the art of practices and knowledge in the drug treatment field.
- Adequacy of collaboration between the State and the local communities in conducting the needs assessment and in plans for conduct of the project.
- Adequacy of organization and staffing plans to ensure feasibility and quality of the proposed project.
- Likelihood of meeting identified emergency drug treatment needs within the six month period of the award.
- Appropriateness of the proposed budget.

Award Decisions

Upon completion of the objective, technical review of each application, award decisions will be made by OTI staff. Every effort will be made to complete the review process within 4 weeks of receipt of applications. Award decisions will be based on overall technical merit of the project as determined by objective review, OTI's program needs and balance, availability of funds, and focus on special populations in need.

Terms and Conditions

Grant funds may be requested for expenses clearly related and necessary to carry out the proposed project, including both direct costs which can be specifically identified with the project and allowable indirect costs of the applicant organization. Allowable items of expenditure include:

- Salaries, wages and fringe benefits of professionals and other supporting staff engaged in the project activities;
- Supplies, communications, rental of space or vehicles;
- Contracts for performance of specific project activities;
- Where these costs are not covered by FEMA under The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288, as amended), facility alterations and renovations (A&R) will be allowable where necessary for restoration of drug abuse treatment services disrupted by the disaster, [These costs are subject to Public Health Service (PHS) policy which states that "the maximum amount of PHS grant funds that may be spent for any single A&R project is lesser of—$150,000 or 25% of the total direct costs awarded—Construction costs are not allowable]. Under no circumstances may funds provided under this announcement be used to meet local cost sharing requirements for facility A&R funded by FEMA. Furthermore, OTI grant funds can not be used for costs covered by commercial insurance carriers.

No less than 95% of the total amount awarded must be allocated for activities to: (1) Restore drug abuse treatment services; and (2) meet emergency drug abuse treatment needs arising from the disaster. From any remaining funds, the State may recover up to its actual costs (but in no case more than 5%) of involvement (direct and indirect) in the program.

Grant funds cannot be used to supplant current funding for existing activities.

Grants must be administerd in accordance with the PHS Grants Policy Statement (Rev. January 1, 1987).

Federal regulations at Title 45 CFR Part 92, generic requirements concerning the administration of grants, are applicable to these awards.

A final report describing activities carried out under the grant will be required at the conclusion of the six month period of support. Instructions for this report will be made available at the time of the award.

Confidentiality

"Confidentiality of Alcohol and Drug Abuse Patient Records" regulations (42 CFR part 2) are applicable to any information about alcohol and other drug abuse patients obtained by a "program" (42 CFR 2.11), if the program is federally assisted in any manner (42 CFR 2.12b). This means that all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR part 2.

Period of Support

As mandated by section 311(c)(2) of the Public Health Service (PHS) Act, support may be requested for a period of up to six months.

Availability of Funds

In Fiscal Year 1990, approximately $2 million is available to support this program. The award of grants under this program in future fiscal years is subject to availability of funds.

Contacts for Further Information

Questions concerning program issues may be directed to the office listed below: Dr. Walter Faggett, Chief, Community Assistance Branch, Office of Treatment Improvement ADAMHA, Rockwall II, 10th Floor, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–6533.

Questions concerning grants management issues may be directed to the office listed below: Joseph Weeda, Grants Management Branch, NIAAA, Room 16–86, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4703.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Public Law 96–511, OMB Approval Number 0937–0189.

(The Catalog of Federal Domestic Assistance number for this program is 13.195.)

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90–5912 Filed 3–14–90; 8:45 am]

BILLING CODE 4160–20–M

Cooperative Agreements for Drug Abuse Treatment Improvement Projects in Target Cities

Office: Office for Treatment Improvement, ADAMHA, HHS.

ACTION: Request for applications for cooperative agreements for drug abuse treatment improvement projects in target cities

Background/Purpose

Whereas most areas of the United States could benefit from additional financial aid for their drug treatment efforts, certain cities are facing such extreme numbers of drug users as to characterize them as crisis areas. In its role of implementing demand reduction programs for the National Drug Control

Strategy, and under statutory authority of Section 509G of the Public Health Service Act, the Office for Treatment Improvement (OTI) is undertaking a program to assist such crisis areas in improving their drug treatment services and systems. Cooperative agreement awards will be made to States on behalf of five to eight cities with urgent needs, and which meet the criteria stated elsewhere in this announcement. This program represents a major initiative under the National Drug Control Strategy.

The target cities program is designed to assist in improving the quality and effectiveness of treatment services in cities with critical drug abuse treatment needs. The program will support activities designed to improve the delivery, accessibility and success of treatment services, strengthen the drug treatment infrastructure, and foster coordination and collaboration among local treatment programs. Applicants will be expected to develop proposals based on a comprehensive assessment of the treatment system in the target city. It is intended that treatment improvement initiatives developed in the selected cities will serve as models to the rest of the nation, for systems to provide high quality, patient-oriented, coordinated, accessible drug abuse treatment. It should be noted that the intent of this program is not to support expanded treatment services, but rather to improve existing services.

Projects will be supported for cities in which demand for drug abuse treatment services exists, and in which there is a high prevalence of drug abuse and a high incidence of drug-related crimes. In addition, projects must have a focus on improvement of treatment services for at least one of the following populations: adolescents, minorities, pregnant women, female addicts and their children, or residents of public housing projects.

The cooperative agreement mechanism, involving substantial OTI staff participation after award, is being used to facilitate coordination with other ADAMHA treatment programs, promote collaboration and sharing among the projects funded under this program, and make available expert consultation to assist States and communities in improving drug treatment.

Eligibility

Eligibility is limited to States requesting support on behalf of cities with a population over 315,000, based on 1986 data published in Statistical Abstract of the United States 1989 (109th edition) by the U.S. Department of Commerce, Bureau of the Census (see Appendix A). These data refer to municipal limits as of December 31, 1985. A single State agency for drug abuse treatment (as designated in writing by the Governor) may apply. Each State must provide evidence of the collaboration and involvement of the affected city government, in a letter of agreement between the State and the city.

For purposes of this announcement, "State" is defined as the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the successor States to the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Eligibility is restricted to States in order to maximize the long-term benefit of these awards. It is anticipated that the high degree of State involvement in the projects from the outset will facilitiate planning for State funding of future efforts in the target cities, after Federal funding for the projects has ended. It is also expected that awards to States will ensure coordination of activities in the target cities with ongoing Alcohol, Drug Abuse and Mental Health Services (ADMS) Block Grants, as well as with State drug abuse programs.

Competition is also being limited to applications for projects in cities with a population over 315,000 (representing the top 50 cities in population size) so as to maximize the impact of available funds in large cities of particularly high drug abuse incidence. Applicants will have to demonstrate, with the use of statistics, that the proposed target city has drug abuse problems of crisis proportions.

A State may request support on behalf of only one city. While some States may have multiple cities needing this type of assistance, OTI is restricting eligibility to a single city per State in order to achieve reasonable geographic balance in the overall program, and to permit sufficient intensity of efforts in the selected cities so that a positive outcome is likely.

Program Objectives

This program is designed to improve the quality and effectiveness of drug abuse treatment services in a limited number of cities, which hopefully can serve as models to the rest of the nation of systems providing high quality, patient-oriented, coordinated and accessible drug treatment. This program is intended primarily to enhance and improve existing treatment services, rather than to increase treatment slots or create new treatment programs. However, with appropriate justification and in limited circumstances, funding of increased treatment slots through this program may be considered, within the context of the overall treatment improvement strategy proposed by the applicant. It is not intended that the treatment programs herein described be entirely supported through OTI funds. Rather, these monies are intended to augment existing programs, and as seed money to initiate activities whose funding will later be assumed by other sources.

It is the intent of OTI that individual treatment improvement projects be developed on the basis of a comprehensive needs assessment carried out by the State, in collaboration with city officials and local treatment providers. The general sources of information appropriate for inclusion in such a needs assessment are described in this announcement. The focus of this needs assessment is to determine what problems exist, and to identify needs for improvement, in the current drug abuse treatment system and in the quality and effectiveness of services. This should lead to the development of a proposed treatment improvement project that addresses solutions to the problems identified in the assessment.

The primary objectives that OTI envisions for treatment improvement projects include:

(1) Improving patient retention and reducing relapse;

(2) Improving staff retention and quality;

(3) Providing a full range of drug treatment and related health and human services;

(4) Improving utilization of drug treatment resources; and

(5) Improving treatment services for at least one of the following populations: adolescents, minorities, pregnant women, female addicts and their children, or residents of public housing projects.

Achievement of these objectives will require the adaptation of treatment systems so as to address the complexity of patient needs: biological/physical; psychological; instrumental (child care, transportation, shelter); informational, vocational, and educational; and life skills.

The target cities program is also designed to enhance collaboration among State, local and Federal officials in seeking improvements in the treatment system. Whereas the primary responsibility for the pre-application

needs assessment, preparation of a treatment improvement project plan, and application and conduct of the treatment improvement program lies with the State and target city, OTI staff will play an important collaborative role after awards are made. They will: provide technical assistance in the development of operational plans for the treatment improvement project; offer specialized consultation on particular problem areas; promote exchange of information among the selected cities under this program, State and Federal agencies, and the drug abuse treatment field; conduct a national evaluation; and promote the replication of effective models with promise for use in other sites.

Applicants will be expected to document that there are drug abuse problems of crisis proportions in the target city. However, this is not a sufficient condition for award. Applications will be evaluated on the basis of the adequacy of the needs assessment, extent of systemic problems in the drug abuse treatment system, and adequacy and appropriateness of proposed solutions to these problems.

Program Description

Based on a comprehensive needs assessment, as documented in the application, the State, in collaboration with the city, will develop a proposed treatment improvement project for the target city. Specific treatment improvement objectives must be proposed. A wide range of types of activities can be proposed in support of these objectives. *Four activities are mandatory:*

- Improved coordination among local drug abuse, health, mental health, education, law enforcement, judicial, correctional, and human services agencies;
- Establishment or enhancement of central intake and referral facilities (see Appendix B), including automated patient tracking and referral systems, and the development of appropriate computer and management information system capabilities to support such facilities;
- Implementation of measures to ensure the quality of services provided, for example, the introduction of standards for treatment programs, and the introduction of a wider range of treatment and rehabilitation services to meet patient needs; and
- Activities in which there is a focus on improving treatment services for at least one of the following populations: adolescents, minorities, pregnant women, female addicts and their children, or residents of public housing projects.

Other proposed activities may include, for example: enhanced provision of primary medical care as a component of drug abuse treatment; staff development initiatives, including the development of performance, promotion, and incentive structures; staff training and in-service education to upgrade skills of treatment personnel and to provide information on research findings relating to treatment efficacy; treatment facilities improvements; aftercare enhancement, including activities to improve patient retention and involvement in treatment, and to develop drug-free cooperative living arrangements; enhancement of services for special populations in need; outreach enhancement; improved assessment and treatment planning; reductions in patient-to-staff ratios; mainstreaming treatment of substance abuse into primary medical care settings; improved case management; development and implementation of performance standards for drug treatment programs; and enhancement of counseling and support services for families of persons in treatment.

States/cities may give attention to improving treatment services for other populations, including HIV-infected drug users and the homeless. Also of importance are activities that enhance interagency coordination and services for substance abusers with co-occurring alcohol and/or mental health problems.

Funding for activities to improve treatment for certain special populations is also available under separate OTI grant announcements; however, funds for the same activities in the same program and for the same population may not be requested in more than one application (whether submitted by the State under this announcement or any eligible entity under another OTI announcement). This same principle also applies to other programs of ADAMHA, including those of the Office for Substance Abuse Prevention, the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute of Mental Health.

Coordination among related health and human services agencies and public and private drug treatment providers is expected to be of a substantive, collaborative nature, as indicated in formal letters of agreement or support. It may include such activities as: staff representation on oversight boards; interagency staff meetings or workshops; facilitation of treatment referral; facilitation of referral for aftercare or auxiliary social, vocational, and housing services; provision of training services; and interagency case conferences.

The funded activities for each target city will be overseen by a policy steering group. Each such group will be composed of State and city staff, county staff (if appropriate), and appropriate representation of treatment providing organizations, allied organizations, and OTI staff. It is expected that this group will have about 10 to 20 members. The State will be responsible for convening regular meetings of the group, on a schedule to be determined in collaboration with OTI staff. During such meetings, the group will review plans and progress to date, and will make recommendations to the State and the city.

Other than State costs specified below under Terms and Conditions, monies awarded through these cooperative agreements are designated primarily to serve the needs of residents living within the municipal limits of the affected city. At the State's option, however, proposed activities may also draw on resources located in areas of the surrounding jurisdictions, if use of such resources will enhance services for residents of the selected city. Support may also be requested for activities involving improvements in services and/or coordination with surrounding jurisdictions, but the primary focus of the project activities must be on the target city.

Letter of Intent

States planning to submit an application for a cooperative agreement under this program are requested to submit a letter of intent to OTI. Such notification is used by OTI for purposes of review and program planning. The letter of intent should be no longer than one page and should succinctly indicate:

- The title of this announcement;
- The potential applicant State and city;
- The name and affiliation of the individual who will be assigned to coordinate the development of the cooperative agreement project; and
- The overall scope of the proposed program, including a brief description of the likely goals and objectives of the proposed project, including specific treatment improvement strategies.

The letter of intent is due April 1, 1990. The letter should be directed to Walter Faggett, M.D., Office for Treatment Improvement, ADAMHA, 5600 Fishers Lane, Rockwall II Building, 10th Floor, Rockville, MD 20857. The

letter of intent is voluntary, and States submitting the letter incur no further obligation to submit a formal application.

Application Process

States should use the grant application form PHS 5161–1 (Rev. 3/89). This title of the RFA, "Cooperative Agreements for Drug Abuse Treatment Improvement Projects in Target Cities," should be typed in item number 9 on the face page of the form.

Application kits containing the PHS 5161–1 and necessary instructions may be obtained from: Office for Treatment Improvement, c/o Technical Resources, Inc., P.O. Box 919, Rockville, MD 20848–0919.

The signed original and two permanent, legible copies of the form PHS 5161–1 must be sent to: Office for Treatment Improvement, c/o Technical Resources, Inc., P.O. Box 919, Rockville, MD 20848–0919.

Application Receipt and Review

All applications must be received by OTI by May 23, 1990. Applications received after this date will be returned without consideration.

Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications will be reviewed, and, if necessary, site visited, during June and July. Awards will be made by September 30, 1990.

Application Requirements

Each eligible State, in collaboration with the selected target city, will develop and submit an application for funding. The application should describe a plan of implementation covering the full period for which funding is requested (i.e. the full three-year period). The narrative section of the PHS 5161–1 form must address the following topics and be preceded by an Abstract and a Table of Contents identifying sections A–G and appendices as follows:

Narrative

A. Specific Aims
B. Background and Significance
C. Demonstration and Assessment of Need
D. Project Approach
E. Resources/Budget
F. Project Staffing and Organization
G. Evaluation Plan

Appendices

(Be sure to label appendices for each separate component.)

Appendix I. Information on Participating Organizations and Individuals
Appendix II. State/City Letter of Agreement
Appendix III. Other Letters of Agreement or Support
Appendix IV. Resources/Other Support
Appendix V. Organizational Charts
Appendix VI. Resumes of Key Staff
Appendix VII. Job Descriptions for Key Staff

Abstract. The abstract should not exceed thirty typed lines on a single page. The abstract should clearly present the application in summary form, from a "who-what-when-how-where" perspective, so that reviewers can see how the multiple parts of the application fit together to form a coherent whole.

The narrative section of the application shall consist of no more than 115 single-spaced, typed pages. Sections A, B, C, and G combined shall not exceed 15 pages. Sections D, E, and F combined shall not exceed 20 pages for each component, as defined below under instructions for those sections. Separate plans may be submitted for no more than five program components. The narrative should be written in a manner that is self-explanatory to outside reviewers who are unfamiliar with prior related activities of the applicant or the community involved.

A. *Specific Aims.* This section of the application must specify goals and objectives for the proposed program and indicate how these relate to the needs identified in the needs assessment.

B. *Background and Significance.* This section specifies the social and historical context of drug abuse problems in the targeted locality, and the resources that have been devoted to their treatment. It demonstrates familiarity and experience with, and understanding of, drug abuse treatment in the targeted community. It provides a description of the community the proposed project is intended to serve (e.g., population, location, demographic and socioeconomic characteristics, ethnic minority composition). It describes how the project will contribute to drug treatment improvement and enhancement for the city, rather than duplication of efforts already underway.

C. *Demonstration and Assessment of Need.* This section must describe need through the use of a quantitative and qualitative analysis, and must present an overview of the current capacity of the existing treatment system.

Applications must demonstrate that there are drug abuse problems of crisis proportions by use of statitics such as: drug abuse admissions to emergency rooms; drug abuse-related deaths; drug abuse-related HIV infection rates; incidence of drug use among arrestees; crime statistics; and data on waiting lists or other measures of demand for treatment.

The applicant's assessment of needs for treatment improvement must be described in the application in detail. The assessment approach may include such qualitative as ethnographic analyses, surveys of key individuals in the community, community forums, and focus groups. The applicant may also examine quantitative data from such sources as the U.S. Census, market research, surveys of treatment programs, epidemiologic and other surveys, city planning department records, medical records/utilization figures, and criminal justice/local police profiles. The submission of maps indicating specific communities or neighborhoods in need of drug treatment improvement is encouraged. In addition, the procedures used in conducting the needs assessment must be described in the application, including what individuals, agencies, and organizations participated in the assessment.

Treatment system assessments may focus on currently constituted program components, such as:

- Patient intake and referral procedures within and across programs;
- Community outreach activities to encourage entrance to treatment;
- Resource conditions and needs of treatment programs, including physical plant, staffing (quality, recruitment, retention, training, and caseload);
- Availability and quality of appropriate treatment and aftercare modalities to serve populations in need of services, including current number of drug treatment slots;
- Types of services commonly found in local treatment programs;
- Coordination among relevant agencies (e.g., general health care, criminal justice system, education, welfare, and other social service agencies) as related to intake/referral, treatment, and post-treatment follow-up.

Applications should include examples of how the affected city has attempted to deal with the identified needs and other deficiencies to date. Applications should describe the needs of special populations, including pregnant women and their children, female drug abusers, ethnic minorities, adolescents, HIV-infected drug users, residents of public housing projects, the homeless, and substance abusers with co-occurring alcohol and/or mental health problems.

D. *Project Approach.* To the extent possible, separate the project into discrete components centered around major objectives of the treatment improvement project, and present a

separate plan for each. In this section, clearly identify specific proposed activities that address each of the mandatory activities cited under *Program Description,* as well as other proposed activities. Each plan must provide the following information:

- A discussion of specific objectives, which should be stated in measurable terms and related to behavioral, environmental, and/or administrative changes the project will aim to achieve. Also, there should be a clear statement as to how each objective relates to the overall goal of treatment improvement;
- A detailed description of planned activities for addressing each objective;
- A brief, clear description of the proposed organizations and agencies with central involvement in the project. This description may be provided once, rather than repeated in the project plan for each component. Provide, as an appendix to the application, names, addresses, and brief descriptions of organizations, along with the name and phone number of the responsible contact person at each organization. A description of the collaborative relationship between the State and the city should be provided in the narrative. A letter of agreement between the State and the city must be included in a specially labeled appendix. Letters of agreement or support with other organizations or agencies should also be included in a separate appendix.
- A description of the activities to be undertaken, and how these activities address the needs described under section C.
- A project management plan with specific timelines for implementation of the activities. This must include a description of tasks to be performed, their sequence, performance schedule, and their relationship to each other. The accomplishment of these tasks should be related to the project goals and objectives.
- Measures to address the needs of relevant minority groups in the community.
- A description of the involvement and role of the policy steering group, suggested candidates for membership, and a proposed meeting schedule. This description may be provided once, rather than repeated in the project plan for each component.

E. *Resources/Budget.* To the extent possible, separate the project into discrete components centered around major objectives of the treatment improvement project, and present a separate plan for each. Each plan should describe and justify the resources requested, including personnel, fringe benefits, travel, equipment, supplies, contractual, renovation, other, direct, and indirect charges. Describe the facilities, equipment, services, and other resources available to carry out the project and specify their source (e.g., agency, organization, individual). Indicate the terms, conditions, and timetables of availability of these resources. Include plans for obtaining continued support for the project after funding under this cooperative agreement program has ended, such as State or local revenues, support from the business community, third party revenues, Federal Block Grant funds, patient fees, or other fund-raising activities.

"Other support" refers to all current or pending support related to this application. Applicant organizations are reminded of the necessity to provide full and reliable information regarding "other support," i.e. all Federal and non-Federal active or pending support. Applications should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS, and could therefore lead to delay in the processing of the application. In signing the face page of the application, the authorized representative of the applicant organization certifies that the application information is accurate and complete.

For your organization and key organizations that are collaborating with you in this proposed project, list all currently active support and any applications/proposals pending review or funding that relate to the project. If none, state "none."

For all active and pending support listed, also provide the following information:

(1) Source of support (including identifying number and title).

(2) Dates of entire project period.

(3) Annual direct costs supported/requested.

(4) Brief description of the project.

(5) Whether project overlaps, duplicates, or is being supplemented by the present application. Delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

This information must be provided in a specially labeled appendix, "Resources/Other Support."

F. *Project Staffing and Organization.* To the extent possible, separate the project into discrete components centered around major objectives of the treatment improvement project, and present a separate plan for each. Each plan should provide a description of the organizational structure of the proposed project, and a chart showing the relationships among the proposed organizations and agencies with central involvement in the project should be included in a specially labeled appendix.

Designate key staff on the project, and include their resumes in a specially labeled appendix. Distinguish between staff whose salaries are funded by the project, and key staff involved in the project, but not paid through the cooperative agreement monies. Job descriptions for all key professional positions identified in the proposed budget must be included in a specially labeled appendix. Provide a staff loading chart, indicating proportion of staff time to be spent on the designated tasks outlined in section D.

Include a brief narrative section describing how staff will be recruited and selected, and whether any particular mix of background, skills, and personal qualities of staff is proposed. Consideration must be given to the employment of staff representing the gender, ethnic, and cultural composition of the target communities.

G. *Evaluation Plan.* Aplications must include an evaluation plan that addresses both process and outcome components. The results of the process evaluation should, at a minimum, provide a useful description of what kind of changes were made in the treatment system, by whom, and how and where the changes were implemented. The outcome evaluation is intended to assess whether the program was effective in meeting the goals resulting from the applicant's needs assessment. The applicant must incorporate into the plan responsibilities for the data collection and analysis necessary to conduct evaluation at the project level, and an outline of the types of data to be collected.

In addition to the applicant's individual project evaluation, a national evaluation will be conducted by a contractor whose services are procured by OTI. The application must state the willingness of the applicant to participate in the national evaluation.

Review Process

Applications will be reviewed in accordance with PHS/ADAMHA policies for objective review. One or more review groups, consisting primarily of non-Federal experts, will review the applications for technical merit.

The objective review group(s) will conduct an initial review of each application on the basis of the review criteria listed below, and will determine

whether each application is competitive or non-competitive. Members of the review group(s) will conduct site visits for those applications judged to be competitive. Following the site visits, the reviewers will assign ratings based on merit. These ratings will be a major consideration in making funding decisions. Written notification of the results of the review will be sent to the States.

For projects proposing multiple components, the rating assigned to each application will reflect an assessment of the merits of individual components, along with an asssessment of the overall project as an integrated approach to treatment improvement in the target city. Reviewers may disapprove individual components if they are deemed not to be sufficiently meritorious. However, since the rating will reflect the assessment of all approved components and the approved project as a whole, it is important that all parts of the application be well designed.

Review Criteria

Review criteria will include:

- Demonstrated drug abuse problems of crisis proportions in the city;
- Demonstrated need of the city for improvement of drug abuse treatment services;
- Adequacy and comprehensiveness of the needs assessment;
- Clarity and reasonability of the goals and objectives in view of the needs assessment;
- Adequacy and appropriateness of the proposed plan to carry out the project;
- Feasibility of the proposed project;
- Qualifications and experience of the project director and other key personnel;
- Availability of adequate facilities, other resources, and collaborative arrangements necessary for the project;
- Appropriateness of budget request for the proposed activities;
- Evidence of support and specific commitments from relevant State and local groups and agencies involved in the project;
- Evidence that the proposed project is ethnically, racially, and culturally relevant to target populations;
- Appropriateness of plans for improving services for special populations in need;
- Logic and reasonability of project management plan;
- Feasibility of the approach for continued support for the project after Federal funding has ended;
- Degree to which Federal funds are likely to have an impact or to be able to leverage other available resources.
- Adequacy of the evaluation plan.

Award Criteria

Upon completion of the technical review, award decisions will be made by OTI staff. These will be based upon: overall technical merit of the project as determined by objective review; OTI's program needs and balance; availability of funds; geographic balance; potential applicability of the proposed project to other cities; and focus on cultural and ethnic minority populations.

Cities that have been declared high intensity drug trafficking areas by the Office of National Drug Control Policy will be given special consideration. However, such designation is neither a necessary nor a sufficient condition for award.

National Evaluation

The Office for Treatment Improvement will award an independent contract for the national evaluation of the programs in the selected cities. Participation in the national evaluation is a requirement of the cooperative agreement.

Confidentiality

"Confidentiality of Alcohol and Drug Abuse Patient Records Regulations" (42 CFR part 2) are applicable to any information about alcohol and other drug abuse patients obtained by a "program" (42 CFR 2.11), if the program is Federally assisted in any manner (42 CFR 2.12b). This means that all project patient records are confidential and may be disclosed and used only in accordance with 42 CFR part 2.

Role of OTI Staff

The cooperative agreement mechanism involves substantial Federal programmatic involvement in the conduct of the treatment improvement project, post-award. This may include: assisting in design of systems changes; provisions of extensive technical assistance; promoting exchange of relevent information among the selected cities, including the facilitation of a learning community, an ongoing information exchange involving the selected cities, States, and treatment experts; contributing guidance to enhance the potential reproducibility of results by other communities; participating in and/or providing support services for training, evaluation, and data collection; arranging for conferences designed to support the activities of the individual cooperative agreements; and membership on policy steering groups and other working groups established to facilitate accomplishment of the project goals.

OTI will provide technical assistance to target cities on an ongoing basis. Such technical assistance will include, but not be limited to, the identification of treatment and management consultants who can provide on-site technical assistance (both within and outside the Federal government), and logistical support to bring consultative assistance on site (travel, compensation, etc.).

Moving from planning to implementation of the overall project will require the prior written approval of the OTI Grants Management Officer. OTI staff must approve plans to subcontract any significant program activities.

Terms and Conditions

Funds may be used for expenses clearly related and necessary to carry out the described project, including both direct costs that can be specifically identified with the project and allowable indirect costs of the organizations. Funds cannot be used to supplant current funding for existing activities. Allowable items of expenditure for which support may be request include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities.
- Travel directly related to carrying out activities under the approved project.
- Supplies, communications, and rental of space directly related to approved project activities.
- Contracts for performance of activities under the approved project.
- Alterations and renovations (A & R). Costs for A & R of facilities will be allowable where necessary for carrying out treatment improvement objectives. These costs are subject to PHS policy, which states that the costs for A & R cannot exceed the lesser of $150,000 or 25% of the total funds to be awarded for direct costs in a three-year period. In addition, the maximum amount of PHS funds that may be sent for any single A & R project is $150,000. Construction costs are not allowable.
- Other such items necessary to support project activities.

This program is intended primarily to enhance and improve treatment services, rather than simply to increase the availability of treatment slots. In certain instances, however, the funding of increased treatment slots or the purchase of treatment services through this program may be considered, if it is justified by the needs assessment.

Whereas these cooperative agreements are intended to serve the needs of residents living in the approved

city, no less than 95 percent of the total amount awarded must be allocated for activities at the local level to improve treatment services for these residents. From any remaining funds, the States may recover up to its actual costs (but in no case more than 5 percent) of involvement (direct and indirect) in the program.

Recipients will be responsible for assuring that any subcontracts are made by competent contractual agreements, as appropriate under State or local law, and as approved by the OTI Government Project Officer.

The cooperative agreements will be subject to the Department of Health and Human Service's generic requirements concerning the administration of grants, as set forth in 45 CFR part 92. Cooperative agreements must be administered in accordance with the PHS Grants Policy Statement (Rev. January 1, 1987).

Executive Order 12372

Intergovernmental review requirements of Executive Order 12372, as implemented through Department of Health and Human Services Regulations in 45 CFR part 100 are applicable to this program. Through this process, States, in consultation with local governments, are provided the opportunity to review and to comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of SPOCs will be included in the application kit. SPOC comments should be forwarded, within 60 days of the receipt date, to:

Office for Treatment Improvement, c/o Technical Resources, Inc., P.O. Box 919, Rockville, MD 20848–0919.

OTI does not guarantee to accommodate or to explain comments from the SPOC that are received after the 60-day period.

Cooperative Agreement Product Ownership

All products developed with these cooperative agreement funds (with the exception of publications in scientific journals) must be published in the public domain and may not be copyrighted, unless prior approval is obtained from the Grants Management Officer. In addition, such products must prominently state: "This document is in the public domain, is not copyrighted, and may be duplicated and used without prior approval." Recipients of the cooperative agreement funds are strongly encouraged to make such products widely available.

Period of Support

Support may be requested for a period of three years. Annual awards will be made subject to continued availability of funds and progress achieved.

Availability of Funds

In fiscal year 1990, approximately $28 million is available to support this program. The expected average amount of an award is $4 million. Awards in future fiscal years are subject to availability of funds.

For Further Information

Questions concerning programs issues may be directed to: Walter Faggett, M.D., Office for Treatment Improvement, ADAMHA, 5600 Fishers Lane, Rockwall II Building, 10th Floor, Rockville, MD 20857, (301) 443–6501.

Questions concerning grants management issues may be directed to: Joseph Weeda, Grants Management Branch, NIAAA, Room 16–86, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4703. The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Public Law 96–511, OMB Approval Number 0937–0189.

(The Catalog of Federal Domestic Assistance Number for this program is 13.196).

Appendix A—Cities With a Population Over 315,000 in 1986

(Based on 1986 data published in Statistical Abstract of the United States 1989, 109th edition, by the U.S. Department of Commerce, Bureau of the Census. Data refer to municipal limits as of December 31, 1985.)

Albuquerque, NM
Atlanta, GA
Austin, TX
Baltimore, MD
Boston, MA
Buffalo, NY
Charlotte, NC
Chicago, IL
Cincinnati, OH
Cleveland, OH
Columbus, OH
Dallas, TX
Denver, CO
Detroit, MI
El Paso, TX
Fort Worth, TX
Honolulu, HI
Houston, TX
Indianapolis, IN
Jacksonville, FL
Kansas City, MO
Long Beach, CA
Los Angeles, CA
Memphis, TN
Miami, FL
Milwaukee, WI
Minneapolis, MN
Nashville-Davidson, TN
Newark, NJ
New Orleans, LA
New York, NY
Oakland, CA
Oklahoma City, OK
Omaha, NE
Philadelphia, PA
Phoenix, AZ
Pittsburgh, PA
Portland, OR
Sacramento, CA
St. Louis, Mo
San Antonio, TX
San Diego, CA
San Francisco, CA
San Jose, CA
Seattle, WA
Toledo, OH
Tucson, AZ
Tulsa, OK
Virginia Beach, VA
Washington, DC

Appendix B—Design for a Model Central Intake and Referral Unit

What Is It?

"Central intake units" were originally developed in the 1970's. These units were designed to serve an entire city, to evaluate the treatment needs of drug abusers, and to refer them to an appropriate external program for treatment. The unit would: interview applicants; put together a personal history; undertake medical, psychological, and other tests if required; and then supply information to the treatment program.

Central intake and referral units generally perform these functions, but also:

- Operate a well-publicized hotline for drug abusers, parents, schools, employers, or others interested in getting information about treatment;
- Conduct outreach programs in jails, courts, schools, emergency rooms, places of employment, and on the street to entice drug abusers into treatment;
- Enroll persons seeking treatment and monitor their movement through the system and their treatment progress;
- Serve as a treatment broker by selecting the appropriate programs for applicants;
- Collect data on the nature, capacity, and quality of the programs in the local treatment network;
- Serve as a resource for epidemiological studies of the local drug scene, shifts in patterns of use, and the spread of AIDS among drug abusers.

Each city funded under this cooperative agreement program must establish or enhance a centralized intake and referral process. In most cities, this will be in a central location.

What Are the Advantages?

These units do not replace the existing outreach, case finding, and intake procedures of local treatment programs, but a local program could contract with the units to provide the program with assessment and intake services.

Employee assistance programs may contract with the units for referral and case management.

The units add to the rapidity and flexibility with which the treatment network responds to changing drug abuse patterns. Because the units are in continuous contact with drug abusers throughout the community, they can

immediately detect changes in treatment needs. Because they are in contact with the entire treatment network, they can identify gaps in services.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-5911 Filed 3-14-90; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Meeting of the Performance Characterization Testing of Certified Coal Mine Dust Personal Sampling Units

Name: Performance Characterization Testing of Certified Coal Mine Dust Personal Sampling Units.

Time and Date: 1 p.m.–4 p.m., March 22, 1990.

Place: Alice Hamilton Laboratory, NIOSH, CDC, Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a project entitled, "Performance Characterization Testing of Certified Coal Mine Dust Personal Sampling Units." This project will assess the performance characteristics of coal mine dust personal sampling units currently certified by National Institute for Occupational Safety and Health (NIOSH) under title 30, part 74 of the Code of Federal Regulations. Determining the level of performance of currently certified coal mine dust personal sampler units during subjection to any array of national and international tests will aid in the development of measurable performance criteria for candidate sampler acceptance and certification.

CONTACT PERSON FOR ADDITIONAL INFORMATION: John M. Dower, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888 Telephone: Commercial (304) 291–4716, FTS: 923–4716.

Dated: March 9, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-5910 Filed 3-14-90; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Lasalocid for Use in Rabbits; Data; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness and environmental data to be used in support of a new animal drug application (NADA) for use of lasalocid sodium in Type C rabbit feed. The data, contained in Public Master File (PMF) 5042, were compiled under Interregional Research Project No. 4 (IR–4), a national agricultural program for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESSES: Submit NADA's to Document Control Section (HFV–16), Center for Veterinary Medicine, Food and Drug Administration, Rm. 6B–45, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: The use of lasalocid in rabbit feed is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, it is subject to section 512 of the act (21 U.S.C. 360b), requiring that it uses be the subject of an approved NADA. The University of Florida IR–4 Project, Southern Region, College of Veterinary Medicine, P.O. Box J–137 JHMHC, Gainesville, FL 32610–0137, provided data and information to demonstrate effectiveness, safety to the target animal, and tissue residue depletion, for use of 125 parts per million lasalocid sodium Type C rabbit feed for prevention of liver coccidiosis caused by *Eimeria stiedae*. The University of Florida also provided an environmental assessment of possible impacts at the site of use of the animal drug product. The data and information are contained in PMF 5042.

Sponsors of NADA's or supplemental NADA's may reference the PMF without further authorization to support the application's approval. An NADA or supplemental NADA should include, in addition to a reference to the PMF, animal drug labeling; other information needed for approval such as human food safety data; information and data concerning manufacturing methods, facilities, and controls; and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for appoval of an NADA may contact Marcia K. Larkins (address above).

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information in this PMF submitted to support approval of an application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: March 7, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-5934 Filed 3-14-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0064]

Adeka Argus Chemical Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Adeka Argus Chemical Co, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl) ester as an antioxidant and/or a stabilizer in polypropylene articles intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Adeka Argus Chemical Co., Ltd., 5–2–13, Shirahata, Urawa City, Saitama Prefecture, Japan has filed a petition (FAP OB4186), proposing that the food additive regulations be amended to provide for the safe use of phosphorous acid, cyclic neopentanetetrayl bis(2,6-di-*tert*-butyl-4-methylphenyl) ester as an antioxidant and/or a stabilizer in polypropylene articles intended for contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the

Federal Register in accordance with 21 CFR 25.40(c).

Dated: March 6, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-5861 Filed 3-14-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0074]

Alpha Omega Technology, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alpha Omega Technology, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of radiation to treat shellfish and finfish.

FOR FURTHER INFORMATION CONTACT:

Clyde A. Takeguchi,

Center for Food Safety and Applied Nutrition (HFF-330),

Food and Drug Administration,

200 C St. SW.,

Washington, DC 20204,

202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Alpha Omega Technology, Inc., 1279 Route 46 East, Parsippany, NJ 07054, has filed a petition (FAP OM4181) proposing that § 179.26 *Ionizing radiation for the treatment of food* (21 CFR 179.26) be amended to provide for the safe use of a source of radiation to irradiate shellfish and finfish for the purpose of extending shelf life and to control infection of microorganisms and parasites.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: March 6, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-5862 Filed 3-14-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0063]

Henkel Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Henkel Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixed ester product resulting from the reaction of pentaerythritol and dipentaerythritol with C_{14}–C_{22} fatty acids as a release agent for ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers, polyethylene phthalate polymers, and poly(tetramethylene terephthalate) intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT:

Sandra L. Varner,

Center for Food Safety and Applied Nutrition (HFF-335),

Food and Drug Administration,

200 C St. SW.,

Washington, DC 20204,

202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4194) has been filed by Henkel Corp., Organic Products Division, 300 Brookside Ave., Ambler, PA 19002, proposing that § 178.3860 Release agents (21 CFR 178.3860) be amended to provide for the safe use of a mixed ester product resulting from the reaction of pentaerythritol and dipentaerythritol with C_{14}–C_{22} fatty acids as a release agent for ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers, polyethylene phthalate polymers, and poly(tetramethylene terephthalate) intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: March 6, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-5863 Filed 3-14-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90G-0035]

Novo Laboratories, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Novo Laboratories, Inc., has filed a petition (GRASP 7G0326), proposing that maltogenic amylase enzyme preparation derived from a genetically modified *Bacillus subtilis* be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Comments by May 14, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Eric L. Flamm,

Center for Food Safety and Applied Nutrition (HFF-334),

Food and Drug Administration,

200 C St. SW.,

Washington, DC 20204,

202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409 (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Novo Laboratories, Inc., 33 Turner Rd., Danbury, CT 06810-5101, has filed a petition (GRASP 7G0326), proposing that maltogenic amylase enzyme preparation derived from a genetically modified *B. subtilis* be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the

Federal Register in accordance with 21 CFR 25.40(c).

Interested persons may, on or before May 14, 1990, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 6, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-5860 Filed 3-14-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0038]

Determination of Regulatory Review Period for Purposes of Patent Extension; Dormosedan®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Dormosedan® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156 (g)(4)(B).

FDA recently approved for marketing the animal drug product Dormosedan® (detomidine hydrochloride). Dormosedan® is indicated for use as a sedative and analgesic to facilitate minor surgical and diagnostic procedures in mature horses and yearlings. Subsequent to this approval, the Patent and Trademark Office (PTO) received a patent term restoration application for Dormosedan® (U.S. Patent No. 4,443,466) from the Farmos Group Ltd. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated January 29, 1990, advised the PTO that the animal drug product had undergone a regulatory review period. The letter also stated that the active ingredient, detomidine hydrochloride, represented the first permitted commercial marketing or use of that active ingredient. Shortly thereafter, the PTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Dormosedan® is 2,382 days. Of this time, 1,538 days occurred during the testing phase of the regulatory review period, while 844 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective:* May 23, 1983. The applicant claims May 19, 1983, as the effective date for the notice of claimed investigational exemption (INAD). However, FDA records indicate that the date of FDA's official acknowledgment letter assigning a number to the INAD was May 23, 1983, which is considered to be the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512 (b) of the Federal Food, Drug, and Cosmetic Act:* August 7, 1987. The applicant claims August 4, 1987, as the date the new animal drug application (NADA) was filed. However, a review of FDA records reveals that the date of FDA's official acknowledgment letter assigning a number to the NADA was August 7, 1987, which is considered to be the submission date for the NADA.

3. *The date the application was approved:* November 27, 1989. FDA has verified the applicant's claim that NADA 140-862 was approved on November 27, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 954 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before May 14, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 17, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 7, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90-5935 Filed 3-14-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-660-N]

Medicare Program; Outpatient Prescription Drugs: List of Covered Home IV Drugs—Withdrawal

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice; withdrawal.

SUMMARY: This notice cross-references a document published elsewhere in this issue of the **Federal Register** that announces the withdrawal of a notice concerning the proposed list of covered home IV drugs under the outpatient prescription drug benefit published September 7, 1989 (54 FR 37239). This notice implements section 201 of the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101-234, enacted December 13, 1989).

EFFECTIVE DATES: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Michelle Bruggy, 301-966-4683.

SUPPLEMENTARY INFORMATION: On September 7, 1989 (54 FR 37239), we published a proposed notice entitled "Outpatient Prescription Drugs: List of Covered Home IV Drugs". This document cross-references a document published in the proposed rule section of this issue of the **Federal Register**, which withdraws all of the proposed documents that were published in accordance with the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988). The withdrawal is in response to section 201 of the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101-234, enacted December 13, 1989).

Authority: Secs 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: December 20, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: February 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-5882 Filed 3-14-90; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Consensus Development Conference On The Treatment of Sleep Disorders of Older People

Notice is hereby given of the NIH Consensus Development Conference on "The Treatment of Sleep Disorders of Older People" which will be held on March 26-28, 1990 in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute on Aging and the NIH Office of Medical Applications of Research and cosponsored by the National Heart, Lung, and Blood Institute; the National Institute of Neurological Disorders and Stroke, and the National Institute of Mental Health.

Sleep disorders afflict over half of the people 65 and older who live at home and about two-thirds of those who live in long-term care facilities. Problems of nighttime sleep and daytime wakefulness disrupt not only the older persons' lives but also those of their families and caregivers. People over 65 years of age now constitute almost 13 percent of the American population but consume over 30 percent of all prescription drugs dispensed, as well as an unknown percentage of over-the-counter medicines. A large proportion of these drugs are sleep medicines and hypnotic agents, the safety and efficacy of which have not been established for older people.

In addition to affecting the quality of life, troubled sleep is associated with excess mortality due to alterations in biological rhythms that affect drug efficacy, platelet aggregability and the risk of heart attack and sudden cardiac death, and catastrophes, such as vehicular accidents and industrial errors. Abnormal sleep in the older person may also reflect underlying disease states that need to be elucidated.

Considerable controversy remains, however, concerning the causes, diagnosis, assessment, and specific treatments of sleep disorders of older people. The purpose of this Consensus Development Conference is to reach agreement on what changes in sleep are clinically important, how they are best diagnosed and treated, and how the public can establish good sleep practices.

Following a day and a half of presentations by experts and discussion by the audience, a Consensus Panel with weigh the scientific evidence and write a draft statement in response to the following questions:

—What are the changes in sleep and wakefulness as functions of aging and of the diseases of older people? What are the diagnostic criteria that establish clinical abnormalities? Which of these are clinically and epidemiologically important?

—What are the indications for a diagnostic evaluation? What sequence of assessment methods should be used to determine if the diagnostic criteria are met?

—What are the indications for treatment of these sleep disorders?

–What are the common medical and lay treatment practices and their health implications?

–What should the medical profession and the general public know about good sleep hygiene and treatment of sleep disorders? What should be done to increase awareness?

–What are the directions for future research?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Dina Rice, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468-6555.

Dated: March 7, 1990.

William Raub,

Acting Director, NIH.

[FR Doc. 90-5885 Filed 3-14-90; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

[Program Announcement No. 13632-90-1]

Developmental Disabilities: Availability of Financial Assistance for the University Affiliated Program

AGENCY: Administration on Developmental Disabilities (ADD), Office of Human Development Services (OHDS).

ACTION: Announcement of Availability of Financial Assistance for the University Affiliated Program.

SUMMARY: The Administration on Developmental Disabilities announces that applications are being accepted in Fiscal Year 1990 from universities in eligible States, Territories and Insular Areas for the purpose of establishing new university affiliated programs or satellite centers, or for conducting feasibility studies leading to the establishment of university affiliated programs or satellite centers. Up to four grants for new programs will be awarded to increase and improve services and programs for persons with

developmental disabilities who live in geographical areas not now benefiting from professional interdisciplinary and community-based training and services designed specifically to meet their special needs.

DATES: Closing date for receipt of applications is: May 14, 1990.

ADDRESSES: Applications should be sent to:

Office of Human Development Services, Acquisition and Assistance Management Branch, 200 Independence Avenue SW., HHH Building, Room 341–F.2, Washington, DC 20201. Attention: Sal Nicolosi.

FOR FURTHER INFORMATION CONTACT: Judy Moore, UAP Coordinator, Program Development Division, ADD. (202) 245–2911.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Background

The Developmental Disabilities program is authorized by the Developmental Disabilities Services and Facilities Construction Act, 42 U.S.C. 6000, *et seq.* (the Act). This Act makes funds available to assist States to assure that persons with developmental disabilities receive appropriate care, treatment, habilitation and support services. Programs funded under the Act are:

- Basic State formula grants;
- Systems for protection and advocacy of individual rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services/technical assistance and information dissemination;
- Grants for Projects of National Significance.

B. Description of University Affiliated Programs

Under part D of the Act grants are awarded to support a national network of university affiliated programs (UAPs) and satellite centers. These programs provide interdisciplinary training, exemplary services, technical assistance and information dissemination for allied health professionals, physicians and parents who provide services to or care for persons with developmental disabilities.

The purpose of these grants is to ensure that there is a professional and paraprofessional work force prepared to meet the service needs of persons with developmental disabilities and their families. Section 153 of the Act (42 U.S.C. 6063) requires the Administration on Developmental Disabilities (ADD) to consider funding four new UAP or satellite center applicants each fiscal year beginning in 1988 through 1990.

This announcement solicits applications from universities to establish new university affiliated programs or satellite centers, or to conduct feasibility studies leading to the establishment of new UAPs or satellite centers in eligible States, Territories and Insular Areas.

The term university affiliated program, as defined by section 102(18) of the Act, means a program operated by a public or nonprofit private entity which is associated with, or is an integral part of, a college or university and which must carry out the following activities:

- *Training.* The UAP or satellite center must provide interdisciplinary training for personnel concerned with developmental disabilities, including parents of persons with developmental disabilities, professionals, paraprofessionals, students and volunteers. Training may be conducted at the facility and through outreach activities.
- *Service Demonstration.* The UAP or satellite center must provide a demonstration program of exemplary services relating to persons with developmental disabilities in settings which are integrated in the community.
- *Technical Assistance.* The UAP or satellite center must provide technical assistance to generic and specialized agencies. The purpose of the technical assistance is to assist the agencies to provide services to increase the independence, productivity, and integration into the community of persons with developmental disabilities, such as the development and improvement of quality assurance mechanisms.
- *Dissemination Activities.* The UAP or satellite center must have a mechanism to disseminate findings relating to the provision of exemplary services as referenced above. They must also provide researchers and government agencies sponsoring service-related research with information on the needs for further service-related research that will assist in increasing the independence, productivity, and integration into the community of persons with developmental disabilities.

A satellite center is defined as a public or private nonprofit entity which is affiliated with one or more university affiliated programs and which—

- functions as a community and regional extension of such a university affiliated program or programs in the delivery of services to persons with developmental disabilities and their families who reside in geographical areas where adequate services are not otherwise available;
- may engage in interdisciplinary training, provision of exemplary services, technical assistance and information dissemination activities as described for a university affiliated program; or
- provides for at least interdisciplinary training for personnel concerned with direct or indirect services to persons with developmental disabilities, and dissemination of findings relating to the provision of services to persons with developmental disabilities.

A feasibility study is a study to determine the need for and feasibility of establishing a new university affiliated program or new satellite center.

C. Eligible Applicants

Any public or non-profit organization associated with or an integral part of a college or university which is located in a State, Territory or Insular Area not now served by an ADD-funded UAP or satellite center is eligible to apply for funding to establish a university affiliated program or a satellite center, or to conduct a feasibility study. Those States, Territories and Insular Areas which have no organized ADD-sponsored program to provide interdisciplinary training and exemplary services on behalf of persons with developmental disabilities, experience greater shortages of properly trained personnel and appropriate services and do not receive the benefits of technical assistance provided by UAPs. There are currently universities in 16 States, Territories and Insular Areas eligible to apply under this announcement:

Alaska
Arizona
Delaware
Maine
New Mexico
Nevada
North Dakota
Oklahoma
Rhode Island
Wyoming
American Samoa
Guam
Northern Mariana Islands
Palau
Puerto Rico
Virgin Islands

D. Available Funds

Depending on the availability of funds, ADD expects to award up to four grants for four university affiliated programs or satellite centers. ADD anticipates a minimum of $200,000 will be awarded for the establishment of a

new UAP; a minimum of $150,000 will be awarded for the establishment of a new satellite center; and a minimum of $10,000 will be awarded for a grant to conduct a feasibility study.

Grants awarded to new UAPs and satellite centers will be for project periods of one to three years. Feasibility study grants will cover a six-month project period, and, upon completion of the study, the grantee must submit a feasibility study report and notify ADD in writing of its intention to apply for funds as a UAP or satellite center.

The 12-month budget period for UAPs and satellite centers begins July 1, 1990 and ends June 30, 1991. The budget period for feasibility study grants begins July 1, 1990.

In FY 1989, potential grantees in 17 States, Territories and Insular Areas were eligible to apply to establish a university affiliated program or a satellite center, or to conduct a feasibility study. Also in FY 1989, ADD awarded two grants to establish university affiliated programs and one grant to conduct a feasibility study.

Part II. Specific Responsibilities of the Applicant

A. Applicant Responsibilities

ADD is requesting applicants to prepare an application of no more than 60 double-spaced typewritten pages of text (40 pages of text for satellite centers) and 50 pages of appendices for UAPs (25 for satellite centers); and no more than 14 pages of text and 10 pages of appendices for feasibility studies.

1. UAP or Satellite Applications

Applications must include all of the items below:

(a) A description and explanation of the ways the applicant program meets the legislative mandates for university affiliated programs or satellite centers under part D of the Act, as appropriate;

(b) A description and explanation of the ways universities affiliated program and satellite center applicants meet, or plan to meet, each of the applicable program criteria for UAPs and satellite centers (See 45 CFR part 1388); and

(c) An assurance that the requirement to provide an opportunity for comment to the general public in the State and to the Developmental Disabilities State Planning Council in which the program will be conducted or the satellite center is lcoated has been met. (See section 153(b)(5) of the Act, 42 U.S.C. 6063(b)(5).)

2. Feasibility Study Applications

Applications to conduct feasibility studies must include all of the items below:

(a) A description of the existing program and a description of the need for the establishment of a new UAP or satellite center;

(b) A description of the activities planned for determining the feasbility of implementing a program to address each of the four major areas of UAP responsibility;

(c) The responsibilities, extent of participation in the project and qualifications of faculty and staff; and

(d) An assurance of affiliation and cooperation with one or more colleges or universities.

B. Grantee Share of the Project

Applicants for university affiliated program, satellite center, and feasibility study projects must provide matching funds of at least 25 percent from a source other than the Federal Government (one dollar match for every three dollars of Federal financial assistance requested). If the Federal share is $75,000, the required non-Federal share is $25,000 for a total project cost of $100,000. If, however, the university affiliated program, satellite center, or feasibility study is located in an urban or rural poverty area, the Federal share may not exceed 90 percent of the project's necessary costs.

Part III. Criteria for Review and Evaluation of Applications

In considering how the grantee will carry out the responsibilities under part II of this announcement, competing applications will be reviewed and evaluated against the following criteria:

A. Objectives and Need for Assistance (25 Points)

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Describe the needs of unserved or underserved populations within the state. Demonstrate the need for the assistance and state the principal and subordinate objectives for the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

B. Results or Benefits Expected (30 Points)

Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory, and research should be indicated.

C. Approach (40 Points)

Outline a plan of action pertaining to the scope of work and detail how the proposed work will be accomplished for each project. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their contribution.

D. Geographic Location (5 Points)

Give the precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

Part IV. The Application Process

A. Availability of Forms

All instructions and forms for submittal of applications are included in an application kit available upon request from the Administration on Developmental Disabilities. The application kit, including certifications regarding drug-free workplace, debarment and lobbying, as well as additional copies of this announcement may be obtained by writing or telephoning:

Judy Moore, Administration on Developmental Disabilities, Program Development Division, 200 Independence Avenue, SW., Hubert H. Humphrey Building, Room 325D, Washington, DC 20201, Telephone (202) 245-2911.

B. Application Submission

One signed original and two copies of the grant application must be mailed or hand delivered to:

Office of Human Development Services, Acquisition and Assistance, Management Branch, 200

Independence Avenue, SW., HHH Building Room, 341–F2, Washington, DC 20201, Attn: Sal Nicolosi.

The original and the copies should be stapled in the upper left corner.

In order to be considered for a grant under this program announcement, an application must be submitted in accordance with the instructions provided in the application kit and in the manner required by this announcement. The application must be executed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

C. Application Consideration

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive peer review and evaluation by qualified individuals. Applicants will be scored against the evaluation criteria listed above. The Commissioners, ADD, determines the final action to be taken with respect to each grant application for this program.

After the Commissioner has made the final selection, unsuccessful applicants will be notified in writing of this final decision. The successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds awarded, the budget period for which support is given, the non-Federal share requirements, and the total period for which project support is contemplated.

D. Closing Date for Receipt of Application

The closing date for receipt of all applications under this Program Announcement is May 14, 1990.

1. *Mailed applications:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the HDS Grants Office, or

b. Sent on or before the deadline date and received by the granting agency in time for the independent review under the Health and Human Services Grants Administration Manual, chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. *Applications submitted by other means:* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the HDS Acquisition and Assistance Management Branch Office during the normal working hours of 9 a.m. to 5:30 p.m., Monday through Friday.

3. *Late applications:* Applications which do not meet criteria one and two above are considered late applications and will not be considered.

4. *Extension of deadline:* The Administration on Developmental Disabilities may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mail. However, if ADD does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for UAP grant applications by OMB.

F. Notification Under Executive Order 12372, State Single Point of Contact

University Affiliated Programs, Satellite Centers and the relevant feasibility study grants are not covered by Executive Order 12372 (Form 424, Item 16).

(Catalog of Federal Domestic Assistance Program Number 13.632 Developmental Disabilities—University Affiliated Programs)

Dated: February 16, 1990.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

Approved: March 7, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90–5994 Filed 3–14–90; 8:45 am]

BILLING CODE 4130–01–M

Public Health Service

Clinical Laboratory Improvement Amendments of 1988 Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 30, 1990, by the Secretrary of Health and Human Services, the Assistant Secretary for Health has delegated the authority under section 4(a) of the Clinical Laboratory Improvement Amendments of 1988, as amended hereafter, to the Director, Centers for Disease Control. This excluded the authority to promulgate regulations and submit reports to the Congress.

Redelegation

This authority may be redelegated.

Effective Date

This delegation became effective upon the date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control, or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 90–5865 Filed 3–14–90; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Procedures for Establishing that an American Indian Group Exists as an Indian Tribe, 25 CFR part 83

OMB Approval Number: 1076–0104

Abstract: The regulations contain seven criteria to be addressed by unrecognized American Indian groups seeking Federal acknowledgment. Information collected from petitioning groups provides anthropological, genealogical and historical data used by Bureau staff to recommend determinations of whether groups have demonstrated characteristics necessary

to be acknowledged as federally recognized tribes.

Bureau Form Number: BIA–8304, BIA–8305, BIA–8306

Frequency: One-time only

Description of Respondents: Unrecognized American Indian groups

Estimated Completion Time: 2,632 hours

Annual Responses: 4

Annual Burden Hours: 10,528

Bureau Clearance Officer: Gail Sheridan, 202–343–1685

Dated: March 1, 1990.

Hazel E. Elbert,

Deputy to the Assistant Secretary—Indian Affairs (Tribal Services)

[FR Doc. 90–5921 Filed 3–14–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA–068–00–7123 52 DO98]

El Mirage Cooperative Management Area; Availability of Draft Management Plan and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of a proposed action at El Mirage dry lake that would affect landowners, visitors, and commercial ventures who have an interest in the area. A draft Management Plan and Environmental Assessment have been prepared for the El Mirage Cooperative Management Area (a regional recreation facility to be managed within a multiple-use context) and are available for review.

DATES: This notice is effective upon date of publication. The public comment period for the draft Management Plan is 45 days beginning March 17, 1990 and ending on April 30, 1990. Public meetings are scheduled for March 29 at 7 p.m. in Colton, California, and March 31, at noon in El Mirage, California.

ADDRESSES: The draft Management Plan, including maps and environmental assessment, is available by either writing, calling, or visiting the Bureau of Land Management (BLM) Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 from 7:45 a.m. until 4:30 p.m., Monday through Friday. Comments are to be sent to this address also. The first public meeting (3/29) will be held at the Honda Rider Education Center, 1301 Via Venita, Colton, CA, 92324. The second meeting (3/31) is at the El Mirage Community Center, 1488 Community Lane, El Mirage.

FOR FURTHER INFORMATION, CONTACT: Mark Davis or Brad Mastin at the above address or telephone (619) 256–3591.

SUPPLEMENTARY INFORMATION: The El Mirage Cooperative Management Area is a joint venture among the BLM, the California Department of Parks and Recreation, the California Off-Highway Motor Vehicle Recreation Commission, and the counties of Los Angeles and San Bernardino to assure the public's long-term access and use of an important recreation resource in southern California. BLM has been designated lead agency and as such has prepared a draft Management Plan. The California Desert Conservation Area Plan 1980, as amended, identified El Mirage day lakebed as an appropriate area to provide opportunities for off-highway vehicle (OHV) play. Other recognized uses for the area have included non-motorized recreation, mining, grazing, and commercial filming.

The draft plan proposes management, construction, maintenance, and private land acquisition programs for the El Mirage Cooperative Management Area. The Management Area includes approximately 24,400 acres within T.6N., R.6W.–7W.; T.7N., R6W.–7W. San Bernardino Base Meridian, Authorities for the management plan are 43 CFR 8340, 8341, 8342, and 8360; Federal Land Policy and Management Act of 1969, Sec. 601 (a)(1–4); and the California Desert Conservation Area Plan of 1980, as amended.

The following information is a synopsis of the management actions contained within the draft Management Plan and analyzed in the environmental assessment for the El Mirage Cooperative Management Area:

Visitor services will be provided to regulate use, to protect the environment, and to ensure the health and safety of visitors. Law enforcement services will be provided within the Management Area and will also be available for recreation-related situations in the immediate vicinity of the Management Area.

Developments include paving 2 miles of the main access road and maintaining 16 miles of dirt roads. Several internal OHV routes will be maintained on an intermittent basis. Entrance fees will be collected. An entrance station will be constructed on the main access road. Five vault toilets will be installed. A headquarters facility will be constructed. Public pay phones will be available for use.

The Management Area will be fenced and no opportunities for OHV play will be provided for adjacent to the Management Area. Isolated parcels of public land surrounding the Management Area will either be closed to vehicle use, or use will be limited to designated routes of travel.

Opportunities will continue for existing uses to occur (motorized and non-motorized recreation, commercial filming, mining, and grazing) with certain restrictions. Restrictions include no shooting, no hare and hound motorcycle races, and limiting the take-off and landing of aircraft to daylight hours.

The dry lakebed will be managed to maintain the surface in a smooth condition, at the historical size. A small section of the lakebed at the east end will be set aside for mud play by OHV's.

Off-highway vehicle play will be managed to ensure the impacts to the natural environment are within acceptable levels. Mitigating actions are planned to ensure the long-term use of the natural resources within the Management Area.

Special actions are planned to manage the Mohave ground squirrel and the desert tortoise. These actions have been developed through extensive dialogue with the California Department of Fish and Game, and the U.S. Fish and Wildlife Service. Formal section 7 consultation, as required by the Endangered Species Act, has been initiated with the U.S. Fish & Wildlife Service for the desert tortoise.

A monitoring program will be implemented to identify any unacceptable levels of impact that may occur to the resources. This will include monitoring the quality of the recreation experience to verify if the regional recreation facility is meeting the visitors needs and expectations.

Special Recreation Permits will be issued for organized activities within the Management Area. Land Use Permits will be issued to authorize non-recreation uses within the Management Area.

A Cooperating Association will be organized to provide the local residents and visitors with an opportunity to participate in the ongoing management and development of the area.

Approximately 12,000 acres of private land will be acquired in a multi-phase land acquisition program. Approximately 9,000 acres will be acquired during the next 5 years. The remaining 3,000 acres will be acquired in the last phase. The acquired lands will be combined with an existing 12,400 acres of public land to bring the total acreage of the Management Area to approximately 24,400. The California Desert Conservation Area Plan (1980)

will be amended to reflect the changes in land ownership.

Private land will be acquired through a combination of methods including: donation, purchase of tax delinquent parcels, purchase from willing landowners, exchange (involving tracts greater than 640 acres), and by exercising the right of eminent domain. Land will be acquired at fair market value. The County of San Bernadino will serve as the acquisition agent.

It is expected that the first phases of acquisition will take approximately 5 years. Development of the facilities will take approximately 3 years. Acquisition and development will commence with the signing of the final Management Plan.

Dated: March 6, 1990.

H.W. Riecken,

Acting District Manager.

[FR Doc. 90-5920 Filed 3-14-90; 8:45 am]

BILLING CODE 4310-40-M

[WY-040-00-4320-12]

Rock Springs District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Rock Springs District Advisory.

SUMMARY: This notice sets for the schedule and agenda of a meeting of the Rock Springs District Advisory Council.

DATES: April 9, 1990, 9 a.m. until 4 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks
2. Review of minutes from last meeting
3. Wild Horse Environmental Assessment updates
4. Pinedale Resource Area Coordinated Activity Plan update
5. Minerals Program briefings: Bridger Coal Drilling, Arch Minerals at Bean Springs, Bridger-Teton National Forest Oil and Gas leasing, Coal bed methane
6. Back Country Byways briefing
7. Farson—Fontenelle Highway Fence briefing
8. Green River Resource Management Plan update
9. Proposed FY 91 Budget Initiatives discussion
10. Public Comment Period

The meeting is open to the public. Interested persons may make oral statements to the Council between 3 p.m. and 4 p.m., April 19, 1990, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the above address by April 17, 1990.

Depending on the number of persons wishing to make oral statements, a time limit per person consideration. Anyone wishing to make an oral statement should notify the District Manager at the above address by April 17, 1990.

Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Donald H. Sweep,

District Manager.

[FR Doc. 90-5917 Filed 3-14-90; 8:45 am]

BILLING CODE 4310-22-M

[WY-930-00-4212-24; WYW 114327]

Realty Action; Conveyance of Mineral Estate; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Vacation of notice of realty action; conveyance of reserved mineral interest.

SUMMARY: The Notice of Realty Action published on February 23, 1990, in Vol. 55, page 6487 of the **Federal Register**, is hereby vacated.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307-772-2072.

Dated: March 9, 1990.

John A. Naylor,

Chief, Branch of Land Resources.

[FR Doc. 90-5908 Filed 3-14-90; 8:45 am]

BILLING CODE 4310-22-M

[WY-930-00-4212-24; WYW 114330]

Realty Action; Conveyance of Mineral Estate; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Vacation of notice of realty action; conveyance of reserved mineral interest.

SUMMARY: The Notice of Realty Action published on February 23, 1990, in Vol. 55, page 6488 of the **Federal Register**, is hereby vacated.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307-772-2072.

Dated: March 9, 1990.

John A. Naylor,

Chief, Branch of Land Resources.

[FR Doc. 90-5909 Filed 3-14-90; 8:45 am]

BILLING CODE 4310-22-M

[ES-940-00-4730-12 and ES-041965, Group 83]

Arkansas; Filing of Plat of Dependent Resurvey, Stayed

March 7, 1990.

On Monday, February 5, 1990 there was published in the **Federal Register**, Volume 55, Number 24, on page 3776 a notice entitled "Filing of Plat of Dependent Resurvey". In said notice was a plat depicting the dependent resurvey of the exterior boundaries and subdivisional lines of Township 3 South, Range 26 West, Fifth Principal Meridian, Arkansas, accepted on January 17, 1990.

The official filing of the plat is hereby stayed, pending consideration of all protests.

Joseph W. Beaudin,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 90-5991 Filed 3-14-90; 8:45 am]

BILLING CODE 4310-GJ-M

[Or-943-00-4214-10; GPO-147; WASH-02220A]

Termination of Proposed Withdrawal and Reservation of Land; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Agriculture, Forest Service, has cancelled its application to withdraw certain land for an addition to the Sullivan Lake Recreation Area. This action will open 265 acres to mining. The land has been and remains open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: Notice of Department of Agriculture, Forest Service application WASH-02220A for withdrawal and reservation of land was published as FR Doc. 89-19329 of the

issue dated August 17, 1989 (54 FR 33979). The purpose of the proposed withdrawal was to protect an addition to the Sullivan Lake Recreation Area located near the town of Metaline Falls, Washington. The applicant agency has determined that the proposed withdrawal is no longer needed and has cancelled the application in its entirety which includes the following described land:

Willamette Meridian

Colville National Forest

T. 39 N., R. 44 E.,
Sec. 29, SE¼SW¼;
Sec. 32, E½W½ and W½SE¼, except those portions withdrawn by Public Land Order No. 1685 dated July 21, 1958, for the Sullivan Creek Recreation Area.

The area described contains, after making the above mentioned exception, approximately 265 acres in Pend Oreille County, Washington.

Pursuant to the regulations contained in 43 CFR 2320.2–1(C), at 8:30 a.m., on April 16, 1990, subject to valid existing rights, the provisions of other existing withdrawals, and the requirements of applicable law, the land will be opened to location and entry under the United States mining laws. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 5, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90–5918 Filed 3–14–90; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–00–4214–10; GPO–146; OR–12170(WASH)]

Termination of Proposed Withdrawal and Reservation of Lands; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Agriculture, Forest Service, has cancelled its application to withdraw certain lands for recreation use. This action will open 4,675 acres to mining. The lands have been and remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: Notice of Department of Agriculture, Forest Service application OR–12170(WASH) for withdrawal and reservation of lands was published as FR Doc. 74–14492 of the issue dated June 25, 1974, and amended in FR Doc. 80–1604 dated January 18, 1980. The purpose of the proposed withdrawal was to protect the recreation areas located northwest of the town of Trout Lake. The applicant agency has determined that the proposed withdrawal is no longer needed and has cancelled the application in its entirety which includes the following described lands:

Willamette Meridian

Gifford Pinchot National Forest

Big Creek Falls Management Unit

T. 7 N., R. 7 E., unsurveyed,
Sec. 14, W½W½NE¼and NW¼.

Curley Creek Campground

T. 7 N., R. 7 E., unsurveyed,
Sec. 29, SE¼.

Lewis River Management Unit

T. 8 N., R. 7 E.,
Sec. 24, NE¼SE¼and S½SE¼;
Sec. 25, N½NE¼, SW¼NE¼, NW¼, and W½SW¼.
T. 8 N., R. 7½ E., unsurveyed,
Sec. 13, E½SE¼;
Sec. 24, NE¼, SE¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 25, W½NW¼.
T. 8 N., R. 8 E., unsurveyed,
Sec. 18, SW¼and W½SE¼;
Sec. 19, N½NW¼.

Midway Management Unit

T. 9 N., R. 9 E., unsurveyed,
Sec. 12, S½SW¼;
Sec. 13, E½and N½NW¼.
T. 9 N., R. 10 E., unsurveyed,
Sec. 3, E½SW¼and W½SE¼;
Sec. 5, W½E½and W½;
Sec. 6, NE¼and S½;
Sec. 7, N½N½, SE¼NE¼, and E½SE¼;
Sec. 8, W½E½and W½;
Sec. 18, W½W½.
T. 10 N., R. 10 E., unsurveyed,
Sec. 33, S½N½and S½;
Sec. 34, SW¼NE¼and S½NW¼.

The areas described aggregate approximately 4,795 acres in Skamania County, Washington.

2. The SE¼SW¼ and W½SE¼ of Sec. 3, T. 9 N., R. 10 E., are included in the Mt. Adams Wilderness withdrawal of September 3, 1964, and remain withdrawn from operation of the public land laws, including the mining and mineral leasing laws.

3. Pursuant to the regulations contained in 43 CFR 2320.2–1(C), at 8:30 a.m., on April 16, 1990, subject to valid existing rights, the provisions of other existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1, except as provided in paragraph 2, will be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 5, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90–5919 Filed 3–14–90; 8:45 am]

BILLING CODE 4310–33–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0061), Washington, DC 20503, telephone 202–395–7340.

Title: Small Operator Assistance Program, part 795

OMB Approval Number: 1029–0061

Abstract: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of the

Surface Mining Control and Reclamation Act of 1977. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant for assistance under the Small Operator Program and the capability and expertise of laboratories to perform the required work.

Bureau Form Number: FS–6
Frequency: On occasion
Description of Respondents: Small coal mine operators
Estimated Completion Time: 66 hours
Annual Responses: 1
Annual Burden Hours: 10,572
Bureau Clearance Officer: Andrew F. DeVito, (202) 343–5954.

Dated: January 2, 1990.

Annetta L. Cheek,

Chief Regulatory Development and Issues Management.

[FR Doc. 90–5916 Filed 3–14–90; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–439 through 444 (Final)]

Industrial Nitrocellulose From Brazil, Japan, People's Republic of China, Republic of Korea, United Kingdom, and West Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–439 (Final) (Brazil), 731–TA–440 (Final) (Japan), 731–TA–441 (Final) (The People's Republic of China), 731–TA–442 (Final) (The Republic of Korea), 731–TA–443 (Final) (The United Kingdom), and 731–TA–444 (Final) (West Germany) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany of industrial nitrocellulose,[1] provided for in subheading 3912.20.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 445.25 of the Tariff Schedules of the United States), that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before May 14, 1990, and the Commission will make its final injury determinations by June 28, 1990, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b)).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–252–1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of industrial nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 19, 1989, by Hercules Incorporated, Wilmington, Delaware. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 47738, November 16, 1989).

Participation in the investigations. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names of addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, providing that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report. The prehearing staff report in these investigations will be placed in the nonpublic record on May 14, 1990, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing. The Commission will hold a hearing in connection with these

[1] Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of these investigations does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

investigations beginning at 9:30 a.m. on May 29, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 18, 1990. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m., on May 23, 1990, at the International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is May 23, 1990. Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 4, 1990. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 4, 1990.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of he Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The evelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than June 8, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: March 9, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–5889 Filed 3–14–90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–290]

Certain Wire Electrical Discharge Machining Apparatus and Components Thereof; Issuance of a Limited Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has issued a limited exclusion order and four cease and desist orders in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Craig L. McKee, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202–252–1117.

SUPPLEMENTARY INFORMATION: The authority for this action is conferred by section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and by the Commission interim rules 210.56 and 210.58 (19 CFR 210.56 and 210.58).

On January 23, 1989, Elox Corporation (Elox) and A.G. fur Industrielle Elektronik (AGIE) filed a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging violation of section 337 in the importation and sale of certain wire electrical discharge machining apparatus that infringed U.S. Letters Patent 3,928,163 (the '163 patent), owned by AGIE, by nine proposed respondents. The Commission instituted an investigation of the complaint and issued a notice of investigation that was published in the **Federal Register** on March 8, 1989 (54 FR 9906).

On December 7, 1989, the presiding ALJ issued an ID finding a violation of section 337 in this investigation.

Respondents Sodick, Inc., Sodick Co., Ltd., Bridgeport Machines, Inc., KGK Corporation, KGK International Corporation, Yamazen Co., Ltd., and Yamazen U.S.A., Inc. filed a petition for review of the ID, and complainants Elox and AGIE and the Commission investigative attorney filed responses to the petition for review. No comments from government agencies or the public were received.

The Commission determined to review those portions of the ID involving the issues of claim construction, anticipation, obviousness, infringement under the doctrine of equivalents, unenforceability for inequitable conduct, and domestic industry, and not to review the remainder of the ID. Complainants, respondents, and the IA filed briefs regarding the issues under review, and remedy, the public interest, and bonding. No reply briefs or submissions from government agencies were received. A number of submissions from the public were received.

Having examined the record in this investigation, including the ID, the Commission concluded that there is a violation of section 337 in the importation, sale for importation, or sale in the United States of wire electrical discharge machining apparatus.

The Commission determined that a limited exclusion order and cease and desist orders directed to the four U.S. respondents are the appropriate form of relief. The Commission further determined that the public interest factors enumerated in 19 U.S.C 1337(d) and (f) do not preclude the issuance of such relief. The Commission determined that respondents' bond under the exclusion order and the cease and desist orders during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles.

Copies of the Commission's orders, the opinions issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are or will be available for

inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

By order of the Commission.

Issued: March 9, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–5884 Filed 3–14–90; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Importers of Controlled Substances; Notice of Registration; McNeilab, Inc.

By Notice Dated January 25, 1989, and published in the Federal Register on February 7, 1989, (54 FR 6043), McNeilab, Inc., Welsh and McKean Roads, Spring House, PA 19477, made application to the Drug Enforcement Administration to be registered as an importer of difenoxin (9168), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: February 29, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90–5894 Filed 3–14–90; 8:45 am]

BILLING CODE 4410-09-M

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application; Penick Corp.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 12, 1990, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca leaves (9040)	II
Raw opium (9600)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 16, 1990.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: February 29, 1990.

Gene R. Haislip,

Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 90–5895 Filed 3–14–90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice Of Application; Ganes Chemicals Inc.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 29, 1990, Ganes Chemicals, Inc., Industrial Park Road, Pennsville, NJ 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 16, 1990.

Dated: March 6, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90–5891 Filed 3–14–90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89–38]

Kin Siu Tam, M.D. Covington, Georgia; Hearing

Notice is hereby given that on May 26, 1989, the Drug Enforcement Administration, Department of Justice, issued to Kin Siu Tam, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BT1199480, and deny any

pending applications for renewal.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, March 20, 1990, commencing at 10:00 a.m., at the Drug Enforcement Administration's Hearing Room, 600 Army-Navy Drive, Room 2123 East, Arlington, Virginia.

Dated: March 7, 1990.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-5892 Filed 3-14-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 8, 1990, Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, NJ 07981, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II
Hydrocodone (9193)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 16, 1990.

Dated: March 5, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Mercury Marine et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act msut be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-23,705; Mercury Marine, Stillwater, OK

TA-W-23,647; Hy Grade Corp., Taylor, PA

TA-W-23,586; Performance Treds, Inc., Suffern, NY

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-23,719; Alexandra Fashions, Inc., North Bergen, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,641; Eaton Corp., Forge Div., Marion,OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,793; Janesville Auto Transport Co., Janesville, WI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA-W-23,759; Data General Corp., Westbrook, ME

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,792; J.R. Simplot Co., Ferndale, WA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,796; Koch Service, Inc., (Corporate Wide), Wichita, KS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974

TA-W-23,802; Materi Exploration, Inc., Upton, WY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,774; Quintana Petroleum Corp., Houston, TX

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA-W-23,761; Leonace Bag & Import Co., East Newark, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,777; Story Well Service, Inc., Magnolia, AR

The investigation revealed that criterion (1) has not been met. A significant number of proportion of the workers did not become totally or partially separated as required for certification.

TA-W-23,708; Powerex, Inc., Youngwood, PA

The investigation revealed that criterion (1) has not been met. A significant number of proportion of the workers did not become totally or partially separated as required for certification.

TA-W-23,717; Aalfs Manufacturing, Inc., Storm Lake, IA

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA-W-23,775; SSMC, Inc., Robotic Systems Group, Fairfield, NJ

The workers' firm does not produce an article as required for certification

under Section 222 of the Trade Act of 1974.

TA–W–23,768; CKC Well Servicing of Oklahoma, Inc., Velma, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–23,520; Cape Cod/Cricket Lane, Inc., West Bridgewater, MA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–23,762; McWilliams Forge Co., Inc., Rockaway, NJ

U.S. imports of ferrous & non-ferrous forgings are negligible

TA–W–23,765; Roy Calcote & Sons Oilfield Construction, Inc., Winters, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade act of 1974.

TA–W–23,767; Western Oilfield Service, Healdton, OK

The investighation revealed that criterion (1) and criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification. A significant number of proportion of the workers did not become totally or partially separated as required for certification.

TA–W–23,764; Precision Well Perforating Corp., Mount, Carmel, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–23,766; Roys Oil Tool, Healdton, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–23,695; Evyan Perfumes/The Estate of Walter Lanter, D/B/A "Evyan Perfumes". New York, NY

Increased imports did not contribute importantlly to workers separations at the firm.

Affirmative Determinations

TA–W–23,713; T.F.M. Industries, Fire Islander Div., Jersey City, NJ

A certification was issued covering all wokers separted on or after November 28, 1988 and before December 15, 1989.

TA–W–23,711; Signetics, Albuquerque, NM

Certification was issued covering all workers separated on or after November 28, 1988.

TA–W–23,736; Enza Fashions, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after December 1, 1988.

TA–W–23,812; Nicolette Fashions, inc., West New York, NJ

A certification was issued covering all workers separated on or after December 1, 1988 and before January 18, 1990.

TA–W–23,723; Charm Knitting Mills, Passaic, NJ

A certification was issued covering all workers separated on or after December 4, 1988 and before May 1, 1989.

TA–W–21,601; CSX Oil and Gas Corp., Western Region, Denver, CO

A certification was issued covering all workers separated on or after October 20, 1987 and before December 31, 1988.

TA–W–22,211; CSX Oil and Gas Corp., Western Region, Oklahoma City, OK

A certification was issued covering all workers separated on or after November 15, 1987 and before December 31, 1988.

TA–W–23,740; Floraham Park Fashions, Inc., Bayonne, NJ

A certification was issued covering all workers separated on or after December 5, 1988.

TA–W–23,753; Shape West (A Div of Shape, Inc.), Tucson, AZ

A certification was issued covering all workers separated on or after December 8, 1988.

TA–W–21,217; Ravanna Oil Co., Big Andy Ridge, Beattyville, KY

A certification was issued covering all workers separated on or after September 20, 1987.

TA–W–21,290; McVay Drilling Co., Hobbs, NM

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,408; Diamond M Drilling Co., Morgan City, LA

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA–W–21,756; Schlumberger Well Service, Bradford, PA

A certification was issued covering all workers separated on or after October 1, 1985 and before March 31, 1987.

TA–W–21,508; Atlas Wireline, Pearland, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1988.

TA–W–21,434; Howell Drilling, Inc., San Antonio, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,476; Sage Drilling Co., Wichita, KS

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,380; Questor Drilling, Inc., Victoria, TX

A certification was issued covering all workers separated on or after January 1, 1986.

TA–W–21,270; Gregg Harriet Shirt Co., Inc., Exmore, VA

A certification was issued covering all workers separated on or after September 28, 1987 and before July 19, 1988.

TA–W–21,128; Parker Drilling Co., Tulsa, OK, TA–W–21,128A; OK, B; TX, C; AK, D; WY

A certification was issued covering all workers separated on or after October 1, 1985 and before August 31, 1987.

TA–W–21,205; Mesa Drilling Co., Abilene, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,186; Gib-Son Cementing Co., Inc., Kilgore, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,222; Rogers Exploration, Midland, TX

A certification was issued covering all workers separated on or after 1, 1985.

TA–W–21,195; Hondo Drilling Co., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,009; Johnson Controls, Inc., Specialty Battery Div., Milwaukee, WI

A certification was issued covering all workers separated on or after September 7, 1987.

TA–W–21,243; Toland & Johnston, Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,180; The Florsheim Shoe Co., Jackson, MO

A certification was issued covering all workers separated on or after January 1, 1988.

TA–W–21,088, 21,089, 21,090; Geo-Search Corp., Midland, TX, Denver, CO, Oklahoma City, OK

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–21,091, 21,092, 21,093, 21,094; Geo-Search Corp, Houston, TX Lubbock, TX, Dallas, TX and Tyler, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA–W–23,722; Center Fashion, Inc., Union City, NJ

A certification was issued covering all workers separated on or after December 1, 1988.

TA–W–21,203; McNeese Logging Service, Inc., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1986 and before June 30, 1988.

TA–W–23,815; Palermo Fashions, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after December 1, 1988 and before January 31, 1990

TA–W–23,818; R.B.M. Manufacturing Co., Inc., Long Branch, NJ

A certification was issued covering all workers separated on or after December 8, 1988.

TA–W–23,785; Franca Fashions, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after December 1, 1988 and before January 31, 1990.

TA–W–23,728; Clara Fashions, Jersey City, NJ

A certification was issued covering all workers separated on or after December 1, 1988.

TA–W–21,374; North American Royalties, Inc., Headquartered in Chattanooga, TN

A certification was issued covering all workers separated on or after October 3, 1987.

TA–W–21,375; North American Royalties, Inc., Midland, TX

A certification was issued covering all workers separated on or after October 3, 1987.

TA–W–21,376; North American Royalties, Inc., Lafayette, LA

A certification was issued covering all workers separated on or after October 3, 1987.

TA–W–21,377; North American Royalties, Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after October 3, 1987.

TA–W–23,709; Powerex, Inc., Auburn, NY

A certification was issued covering all workers separated on or after November 28, 1988 and before April 2, 1989.

TA–W–23,779; Bella Rose Fashions, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after October 1, 1989.

TA–W–23,770; Lenco Fashions, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after October 1, 1989 October 26, 1989.

TA–W–23,415; Cotter Corp., Schwartzwalder Mine, Golden, CO

A certification was issued covering all workers separated on or after September 15, 1989.

TA–W–23,439; AT&T Microelectronics, Allentown, PA

A certification was issued covering all workers separated on or after September 14, 1989.

TA–W–23,836; Christenson Brothers Shake, Inc., Mt. Vernon, WA

A certification was issued covering all workers separated on or after January 4, 1989.

TA–W–23,802; Materi Exploration, Inc., Upton, WY

A certification was issued covering all workers separated on or after December 7, 1988.

TA–W–23,689; Custom Drilling Fluids, Inc., Eunice, LA

A certification was issued covering all workers separated on or after November 27, 1988.

TA–W–23,780; Diamond Coat, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after October 1, 1989.

I hereby certify that the aforementioned determinations were issued during the month of February 1990. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW, Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 6, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–5914 Filed 3–14–90; 8:45 am]

BILLING CODE 4510–39–M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100–203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the third hearing of the National Commission on Children to be held in Charleston, West Virginia.

Time: 1:30 p.m.–4:00 p.m., Monday, March 26, 1990.

Place: Capital High School, 1500 Greenbrier Street, Charleston, West Virginia.

Status: 1:30 p.m.–4:00 p.m., Open to the public.

Agenda: Making Ends Meet: American Families and the Economy.

Contact: Jeannine Atalay, (202) 254–3800.

Dated: November 22, 1989.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 90–5984 Filed 3–14–90; 8:45 am]

BILLING CODE 6820–37–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview section) to the National Council on the Arts will be held on March 21–22, 1990 from 9 a.m.–6 p.m. in room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 21, 1990 from 9 a.m.–6 p.m. and on March 22 from 11 a.m.–6 p.m. The topics for discussion will be dance field overview, program overview and budget, guidelines, Dance on Tour, and policy issues.

The remaining portion of this meeting on March 22, 1990, from 9 a.m.–11 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: February 27, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–5915 Filed 3–14–90; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection:

10 CFR part 40—Domestic Licensing of Source Material
10 CFR part 70—Domestic Licensing of Special Nuclear Material
NRC Form 313—Application for Materials License
Two Year Update of Safety Information

3. The form number if applicable: NRC Form 313.

4. How often the collection is required: The update of the safety demonstration section will be submitted every two years. The application for license renewal will be submitted every ten years.

5. Who will be required or asked to report: Eleven major operating fuel cycle facilities.

6. An estimate of the number of responses: There will be approximately 1 responde annually under part 40, which is reported under the OMB clearance for NRC Form 313, and 4.5 responses annually under part 70.

7. An estimate of the total number of hours needed to complete the requirement or request: The response time will vary from 1600 hours for a renewal application to 180 hours for a safety demonstration section update. The total industry burden will be approximately 464 hours under part 40, reported under the OMB clearance for NRC Form 313, and 2088 hours under part 70.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: NRC is changing the licensing frequency for eleven major fuel cycle facilities from five years to ten years. To ensure that safety information remains current while the period for the overall license submittal is lengthened, NRC will require updates of the safety demonstration section of the license every two years.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC

Comments and questions may be directed by mail to the OMB reviewer:
Nicolas B. Garcia,
Paperwork Reduction Project,
(3150–0009, 3150–0120),
Office of Management and Budget,
Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this seventh day of March 1990.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 90–5981 Filed 3–14–90; 8:45 am]

BILLING CODE 7590–01–M

Meeting of the Advisory Committee on Nuclear Waste; Revision

The Advisory Committee on Nuclear Waste (ACNW) 18th meeting scheduled for March 21, 22, and 23, 1990 has been rescheduled for Thursday, March 22, 1990 and Friday, March 23, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5:00 p.m. each day. The notice of this meeting was previously published in the Federal Register on Friday, March 9, 1990 (55 FR 9036). Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6).

The purpose of the meeting will be to review and discuss the following topics:

A. *Briefing on International Programs Related to Radioactive Waste Management (Open)*—The Committee will discuss the International Programs related to high-level and low-level radioactive waste management.

B. *Briefing by the Illinois Department of Nuclear Safety on Low-Level Waste Activities (Open)*—The Committee will be briefed by a representative of the Illinois Department of Nuclear Safety, on the status of low-level waste management in Illinois.

C. *Committee Activities (Open)*—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate.

E. *Appointment of New Members (Closed)*—the Committee will discuss qualifications of candidates proposed for appointment to the ACNW.

F. *EPA's Proposed Revisions in 40 CFR Part 191, Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level, and Transuranic Wastes (Open)*—The Committee will be briefed by representatives from the Environmental Protection Agency, Science Advisory Board (EPA), Nuclear Waste Technical Review Board, the National Academy of Sciences Board of Nuclear Wastes, the Advisory Committee on Nuclear Facility Safety (DOE) and other appropriate groups on EPA's proposed revisions in the standard.

Procedures for the conduct of an participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only

by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Farley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: March 9, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–5979 Filed 3–14–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Advanced Pressurized Water Reactors; Postponed

The ACRS Subcommittee meeting on Advanced Pressurized Water Reactors scheduled for Thursday, March 22, 1990 has been postponed to Tuesday, April 3, 1990. All other items pertaining to this meeting will remain the same as previously published in the **Federal Register** on Friday, February 23, 1990 (55 FR 6568).

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 8, 1990.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 90–5866 Filed 3–14–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittees on Extreme External Phenomena and Severe Accidents; Meeting

The Subcommittees on Extreme External Phenomena and Severe Accidents will hold a joint meeting on March 27, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, March 27, 1990–8:30 a.m. until the conclusion of business.

The Subcommittees will review the Individual Plant Examination for External Events (IPEEE) Program.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 8, 1990.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 90–5867 Filed 3–14–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Policies and Practices; Meeting

The Subcommittee on Regulatory Policies and Practices will hold a meeting on March 26, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, March 26, 1990–8:30 a.m. until the conclusion of business.

The Subcommittee will review the NRC staff's Draft Rule for license renewal.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and the industry, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Gary Quittschreiber (telephone 301/492–9518) between 7:30 a.m. and 4:15 p.m. Persons planning to

attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 8, 1990.

Raymond F. Fraley,

Executive Director.

[FR Doc. 90-5868 Filed 3-14-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Severe Accidents; Revision

The ACRS Subcommittee meeting on Severe Accidents scheduled for March 21, 1990 has been rescheduled for a two-day meeting, Tuesday, March 20 and Wednesday, March 21, 1990, 8:30 a.m. until 5 p.m. each day, Room P-110, 7920 Norfolk Avenue, Bethesda, MD. All other items pertaining to this meeting remain the same as previously published in the **Federal Register** on Wednesday, March 7, 1990 (55 FR 8247).

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492-9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 8, 1990.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 90-5869 Filed 3-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 15000033-SC/CivP; ASLBP No. 90-601-01-SC/CivP E.A. 88-265]

Memorandum and Order Rescheduled Prehearing Conference; Basin Services, Inc.

Atomic Safety and Licensing Board, before Administrative Judges: Charles Bechhoefer, Chairman Dr. James H. Carpenter Dr. Richard F. Cole.

In the matter of Basin Testing Laboratory, Inc. dba Basin Services, Inc. General Licensee (10 C.F.R. § 150.20).

On March 7, 1990, the NRC Staff by telephone requested an approximate 30-day delay in the prehearing conference currently scheduled for March 22, 1990. The Staff advised that the purpose of the delay is to permit settlement negotiations and that the Licensee had no objection.

The Staff's request is granted. The prehearing conference, initially announced by our Memorandum and Order (Prehearing Conference) dated February 7, 1990 (55 FR 5315, February 14, 1990), is hereby rescheduled for Tuesday, April 24, 1990, beginning at 9:00 a.m., in the Memorial Room, Williams County Courthouse, Williston, North Dakota. The date by which parties may file proposed agenda for the conference (and the Staff should provide the background documents which we previously requested) is extended to Tuesday, April 10, 1990.

Matters to be considered at the conference were outlined in our February 7, 1990 Memorandum and Order. As set forth in that issuance, the Board will hear oral limited appearance statements at the outset of the conference, beginning at 9:00 a.m. on April 24, 1990, from persons who are present at that time.

It is so ordered.

For the Atomic Safety and Licensing Board.

Bethesda, Maryland March 9, 1990.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 90-5978 Filed 3-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric and Gas Co.; Correction

On February 21, 1990, the **Federal Register** published the Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 6116, second column, under Public Service Electric and Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey, the Date of Amendment Request "January 31, 1989" should read "January 31, 1990."

Dated at Rockville, Maryland this 8th day of March 1990.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Acting Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-5980 Filed 3-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260 and 50-296]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-33, DPR-52 and DPR-68, issued to Tennessee Valley Authority (TVA) (the licensee), for operation of the Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, located in Limestone County, Alabama.

This amendment for each unit would accomplish the following changes to requirements in the BFN Technical Specifications (TS): (1) Delete the remaining portions of temporary amendments 151, 147, and 122 for BFN Units 1, 2 and 3, respectively; (2) revise the Limiting Condition for Operations (LCO) 3.7.B.4 [Standby Gas Treatment System (SGTS)] and LCO 3.7.C.2 (Secondary Containment) to conform more closely with the NRC Standard Technical Specifications (STS); (3) revise the associated TS Bases accordingly; and (4) clarify the applicability of LCO 3.7.C.4.b (Secondary Containment). In general, these changes will allow TVA the flexibility, under certain circumstances, to have the secondary containment not be operable when primary containment integrity is not being required (e.g., during refueling outages).

TVA has requested that the secondary containment at BFN-2 be permitted to be inoperable as soon as possible in order to expedite modifications to the Emergency Equipment Cooling Water (EECW) System. One train of EECW is always required to be operable by TS to support operability of the emergency diesel generators, which provide emergency power for the Standby Gas Treatment System (SGTS). The SGTS is required to be operable whenever secondary containment is operable. Consequently, the EECW modifications are currently being performed utilizing a system outage concept where a portion of the EECW system is in operation at all times to provide the necessary cooling water to the diesel generators. Because of its effects on the EECW system operability, maintaining secondary containment integrity is projected by TVA to extend the present outage modification schedule by approximately four weeks. The proposed amendments will allow TVA

to work on all portions of the EECW system concurrently. This will significantly increase the efficiency of outstanding BFN–2 modifications work without degrading plant safety and the modifications on the EECW system will be completed sooner. Therefore, in accordance with 10 CFR 50.91(a)(6), the NRC has concluded that exigent conditions exist at BFN that permit the staff to act on these proposed amendments without allowing the normal 30-day public comment period required in 10 CFR 50.91(a)(2).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment request would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve significant reduction in a margin of safety.

The basis for the Commission's proposed determination of no significant hazards consideration is as follows (Note: Changes (1) and (4) above are considered to be of an administrative nature and would involve no significant hazards considerations):

1. The proposed amendment does not significantly affect the probabillity or consequences of any previously evaluated accident. Secondary containment and SGTS are designed to function together to minimize ground level releases of radioactive materials that might result from an accident during reactor power or refueling operations. The reactor building provides secondary containment during reactor operation, when the drywell is sealed and in service; the reactor building also provides, in effect, primary containment when the reactor is shutdown and the drywell is open, as during refueling. Since the secondary containment is an integral part of the complete containment system, secondary containment is normally required at all times that primary containment is required as well as during refueling. The proposed TS will eliminate the requirement to maintain primary and secondary containment integrity together when the reactor is in cold shutdown, vented, and fuel movements are precluded. When the reactor is undergoing refueling operations, the risk of inadvertent releases of radioactive material from potential accidents involving fuel handling, vessel draining, and/or core alterations are minimized while secondary containment and SGTS are operable. However, when these systems are not operable, the risks of fuel handling and reactivity insertion accidents are minimized because fuel movement and core alterations are excluded whenever secondary containment is not operable or insufficient SGTS capacity is available. The proposed amendment request provides specific actions to be taken if the LCOs cannot be met for the SGTS or secondary containment system that are consistent with the STS for General Electric (GE) designed plants, as is BFN. Both the current and proposed TS require an orderly reactor shutdown (if applicable) and controlled suspension of all activities that have the potential for leading to an accident.

The Fuel Handling Accident and the reactivity insertion accidents are the previously evaluated accidents in Chapter 14 of the BFN Final Safety Analysis Report. The proposed changes do not change the level of protection against these accidents and, therefore, do not affect the probabillity or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibillity of a new or different kind of accident from any accident previously evaluated in the BFN Final Safety Analysis Report. The changes clarify what to do when either the SGTS or secondary containment LCOs cannot be met. The resulting actions to preclude accidents that may cause a radioactive material release are consistent with current industry practice and the Standard TS requirements for GE Boiling Water Reactors. The proposed changes do not add equipment to the plant and do not add any new modes of plant operation which could initiate the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The changes are consistent with the existing BFN Safety Analysis and GE STS. No adverse safety impact or reduction in safety margins occurs due to the proposed changes. The TS will continue to require an orderly shutdown of the operating reactor and cessation of all activities with the potential accident risk to release radioactive material if secondary containment in SGTS LCOs cannot be met. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that this change to each unit does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 16, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Committee's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located in the Athens Public Library, South Street, Athens, Alabama 35611. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary of the designated Atomic Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should be specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 15-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902, attorney for the license.

Nontimely filings of petitions for leave to interview, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated March 6, 1990 and a supplemental letter to the application also dated March 6, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 9th day of March 1990.

For the Nuclear Regulatory Commission.

Suzanne Black,

Assistant Director for Projects, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 90–5982 Filed 3–14–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Access to Private Bonding Markets; Extension of Comments

AGENCY: Office of Federal Procurement Policy (OFPP).

ACTION: Extension of comment period from March 12, 1990 to April 12, 1990 for the Office of Federal Procurement Policy's February 8, 1990 **Federal Register** notice soliciting public comment and suggestions to improve access to private bonding markets for Federal construction contractors.

SUMMARY: In response to public comment that the 30-day comment period was too short and should be extended for another 30 days, OFPP is extending the comment period.

COMMENT DATE: Comments on the February 8 **Federal Register** notice must be received on or before April 12, 1990.

ADDRESS AND INFORMATION CONTACT: Comments should be sent to Carol Dennis, Deputy Associate Administrator, Office of Federal Procurement Policy, Office of Management and Budget, room 9001, New Executive Office Building, Washington, DC 20503. Information or questions may be addressed to Ms. Dennis (202) 395–6810.

Dated: March 6, 1990.

Allan V. Burman,

Administrator Designate.

[FR Doc. 90–5989 Filed 3–14–90; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Meeting

The President's Council of Advisors on Science and Technology (PCAST) will meet on March 22 and 23, 1990. The meeting will begin on March 22 at 9:00 a.m. in Room 22, Old Executive Office Building, recess and reconvene at 9:00 a.m. on March 23 in the Roosevelt Room of the White House.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Discussion of issues and topics for potential working group panels.
2. Briefing of the Council on the current activities of OSTP.
3. Briefing of the Council by OSTP personnel and personnel of other agencies on proposed panel studies and procedures.
4. Discussion of composition of working group panels.

The March 23 session and portions of the March 22 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will include discussion of information that is classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. In addition, agenda items 2, 3, and 4 will involve discussions of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of recommendations made concerning agency action. A portion of the discussion of panel composition will involve the disclosure of information of a personal nature the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, these portions of the meeting will be closed to the public pursuant to 5 U.S.C. c552b. (c) (1), (2), (6), and (9)(B).

Because of the security requirements of the Old Executive Office Building, persons wishing to attend the open portion of the meeting should contact Barbara J. Diering at (202) 456–7347, prior to 3:00 p.m. on March 21, 1990. Mrs. Diering is also available to provide specific information regarding time, place and agenda for the open session.

Dated: March 2, 1990.

Barbara J. Diering,

Committee Management Officer.

[FR Doc. 90–5937 Filed 3–12–90; 11:16 am]

BILLING CODE 3170–01–M

POSTAL RATE COMMISSION

Docket No. R90–1; Order No. 862]

Postal Rate and Fee Changes, 1990; Filing of Proposed Changes in Postal Rates and Fees and Order Designating Officer of the Commission, Fixing Date for Prehearing Conference, and Establishing Procedures

Issued March 9, 1990.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc, III; Patti Birge Tyson

Notice is hereby given that on March 6, 1990, the United States Postal Service (hereafter Postal Service or Service), pursuant to section 3622 of the Postal Reorganization Act (39 U.S.C. 3622), filed a request with the Postal Rate Commission for a recommended decision on certain proposed changes in rates of postage and fees for postal services, and for certain related changes to the Domestic Mail Classification Schedule. This filing has been assigned Docket No. R90–1.

The Postal Service asserts that at current rates, for the fiscal year ending September 30, 1992, it would generate total revenues of approximately $41.9 billion and incur total costs of approximately $49.4 billion, resulting in a total revenue deficiency of approximately $7.5 billion. Since 39 U.S.C. 3621 requires that total estimated income and appropriations will equal as nearly as practical total estimated costs, the Postal Service has filed proposed rate and fee changes with the Commission in order that revenues in the test year [1] should approximately equal total estimated costs. According to the Postal Service, implementation of its suggested rates will increase total revenues by approximately $6.2 billion, while decreasing total costs approximately $1.3 billion.

As indicated by the Postal Service, the approximate percentage rate increases proposed for the various major categories of mail service are as follows:

Category	Rate increase proposed by Postal Service (percent)
First Class:	
Letters	19
Cards	22
Priority	13
Express Mail	11
Second Class:	
In County (full rates)	26
Outside:	
Nonprofit/Classroom	29
Regular Rate	23
Third Class:	
Single Piece	17
Bulk Regular Rate	17
Bulk Rate Nonprofit	23
Fourth Class:	
Parcel Post	24
Bound Printed Matter	14
Special Rate	14
Library Rate	2
Overall increase	19

The specific rates and fees, both current and proposed, are contained in Attachment A to this notice and order.

Included in the Postal Service's filing are proposals for mail classification changes. The major classification changes include: (1) Adding pre-barcode discounts for nonpresorted and 3-digit First-Class Mail, (2) initiating a new Priority Mail presort discount, (3) providing pickup service for Priority Mail and parcel post, (4) providing volume discounts for Express Mail, (5) establishing a special Priority Mail envelope rate for an envelope of specified dimensions but any weight, (6) establishing a special Express Mail envelope rate for an envelope of specified dimensions but any weight, (7) providing a discount for second-class saturation mail presented in walk sequence, (8) establishing ZIP + 4 and pre-barcode discounts for letter-size second-class mail, (9) establishing separate rates for third-class letters and flats, (10) establishing drop ship rates

[1] The Postal Service proposes a test year in this proceeding from October 1, 1991 to September 30, 1992.

for third class to differentiate rates by distance, (11) providing discounts for saturation third-class mail presented in walk sequence, and pre-barcode discounts for basic rate and 3-digit third-class mail, (12) establishing destination BMC rates for parcel post, (13) eliminating the restriction that prevents books from using fourth-class bound printed matter rates, and (14) adding two higher rate categories for post office boxes/caller service in expensive rental areas.

The request of the United States Postal Service for a recommended decision on changes in rates of postage and fees for postal services is on file with the Commission's docket section and is available for public inspection during regular business hours.

I. Intervention

Hearings will be held on the proposal submitted by the Postal Service in Docket No. R90–1. Any person desiring to be heard in this matter or to participate as a party in the hearings, should file a written notice of intervention. Notices of intervention must be filed, with the Secretary, Postal Rate Commission, Washington, DC 20268–0001 on or before April 9, 1990, and must be in accordance with section 20 of the Commission's rules of practice (39 CFR 3001.20). We direct specific attention to 20(b) which provides that notices of intervention shall affirmatively indicate whether or not the petitioner intends to actively participate in the hearings. Alternatively, those persons seeking limited participation who do not wish to become formal intervenors may, on or before April 9, 1990, file a written notice of intervention as a limited participator, pursuant to section 20a of the Commission's rules of practice (39 CFR 3001.20a). In addition, those persons wishing to express their views informally, not desiring to become either a party or limited participant, may file comments pursuant to § 20b of the Commission's rules (39 CFR 3001.20b).

II. Representation of the General Public

We designate, to represent the general public [2] in this proceeding, Stephen A. Gold, the Director of the Office of Consumer Advocate (OCA). During this proceeding, the OCA will direct the activities of Commission personnel assigned to assist him and neither he nor any of those designated assigned personnel will participate in or advise as to any Commission decision in this proceeding.[3] The OCA will supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this proceeding. In this proceeding, the OCA shall be separately served with three copies of all filings in addition to, and simultaneously with, service on the Commission of the 24 copies required by section 10(c) of the rules of practice (39 CFR 3001.10(c)).

III. Discovery

The Commission directs the attention of all participants to the provisions of sections 25, 26, 27 and 28 of the rules of practice (39 CFR 3001.25, 3001.26, 3001.27, 3001.28) establishing the availability of, and rules for, discovery requests. The discovery process is one aspect of this general rate filing which we particularly wish to expedite. All interrogatories must be answered promptly in order that the expedited hearing format which we utilize can function as intended. In this regard, we point out that under our rules of practice, interested parties may immediately obtain active status in this proceeding by filing a notice of intervention. Accordingly, all parties filing such notices may immediately engage in discovery of the Postal Service's case-in-chief, without any additional action by the Commission. In accord with our desire for expedition in this proceeding, parties are actively encouraged to do so.

To facilitate development of an orderly record, discovery requests should be addressed to a specific party and witness, and numbered sequentially, for example, OCA–T2–16 would be the sixteenth question concerning testimony T2 asked by OCA. Participants are also urged to title filings as informatively as possible including an indication of relief sought or the issue being answered.

Participants should be aware that the limited time available to the Commission for issuing its decision makes expeditious discovery practice essential. Participants are put on notice that it is the present intention to schedule completion of discovery concerning the evidence presented by the Postal Service for May 11, 1990, although additional discovery may be allowed, where analysis has been delayed if the Service has failed to present complete information as required by Rule 54 (39 CFR 3001.54).

IV. Procedures For Expedition

Section 3624(c)(1) of the Postal Reorganization Act (39 U.S.C. 3624(c)(1)) provides that the Commission is to render its recommended decision within ten months after receiving a request proposing changes in rates and fees. In order to expedite this proceeding and still be consistent with procedural fairness, we are issuing the present detailed order so that all those who contemplate participating in this proceeding will have sufficient time to prepare for the prehearing conference.

In this regard, we direct the attention of the parties and of those who intend to file notices of intervention or notices of intervention as limited participators to Commission rule 24(d) (39 CFR 3001.24(d)), which sets forth the matters which the presiding officer and participants may consider and resolve at the prehearing conference. All interested persons will have an opportunity to comment, at that time, on the tentative procedural schedule (Attachment B) and on proposed special rules of practice which will be distributed shortly by the Presiding Officer. To the extent feasible, parties are requested to provide comments on the tentative procedural dates and proposed special rules of practice seven days prior to the prehearing conference. All participants are expected to appear at the prehearing conference fully prepared to discuss in detail and make scheduling commitments necessary to resolve all matters contemplated by section 24(d).

In conformity with the requirement of the Postal Reorganization Act and consistent with our past practice in general rate cases, we are resolved to expedite the conduct of this proceeding. We intend to adhere to the procedural requirements and filing deadlines set forth in our rules of practice and in any special rules of practice subsequently promulgated. The parties are forewarned that they should insure, from the outset of this proceeding, that they have provided adequate resources for the timely preparation of and response to discovery requests.

Participants may also inform the Postal Service, informally and promptly, of any desired preliminary clarification in the Service's presentation which the participant believes will assist it in contributing to the expedition of this proceeding. In this regard, consistent with past practice, the Postal Service has offered to schedule technical conferences for this purpose. *See* Notice of the United States Postal Service Regarding Attorney/Witness Assignments, March 6, 1990. Participants are urged to participate in these off-the-record technical conferences to the maximum extent feasible in resolving their particular difficulties. Should these informal procedures be used, every two weeks Postal Service is to file (1) a listing of all information given in

[2] *See* 39 U.S.C. 3624(a), providing for an officer of the Commission for that purpose.

[3] *See* 39 CFR 3001.8.

response to these informal requests, and (2) a copy of such information with the docket section of the Commission. Such a procedure will avoid duplicative requests for information.

If necessary, we shall entertain requests in this docket for preliminary cross-examination of witnesses who fail to provide requisite workpapers or respond to discovery requests in a timely fashion. If a motion to compel is not answered by a showing of cogent and convincing reasons for delay, the presiding officer may prescribe a time at which the witness will appear for oral examination on the subject matter of the request. This examination may be conducted parallel to main hearings, before a special presiding officer to be designated by the Chairman. The special presiding officer will record any objections made, together with the proposed disposition thereof, and transmit both to the presiding officer in this docket. A transcript will be made of all such examination and the responding witness may be represented by counsel. We anticipate that such ancillary proceedings will accelerate the obtaining of responses, while not requiring the main proceeding to be delayed.

As we have emphasized above, the Act requires expedited proceedings, subject to procedural fairness. We wish the parties to be on notice that this mandate of expedition applies also to the briefing stage of the proceeding, following close of the evidentiary record. Parties should be prepared to adhere strictly to a briefing schedule which is consonant with this policy.

V. Date of Initial Prehearing Conference

In accordance with the Commission's goal of expeditious consideration, the Commission will conduct all prehearing conferences and hearings en banc (39 CFR 3001.30(b)). An initial prehearing conference will be held on April 12, 1990. Additional prehearing conferences will be held on such further dates as may be scheduled by the presiding officer who will be designated by the Chairman of the Commission. Unless otherwise indicated, all conferences and hearings will commence each day at 9:30 a.m. at the Postal Rate Commission's hearing room, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001. Hearings shall be on the record and a transcript made except where the presiding officer determines otherwise.

The Commission orders:

(A) The Commission will sit en banc in the above-captioned proceeding.

(B) A prehearing conference in this proceeding will be held on April 12, 1990, commencing at 9:30 a.m. in the Postal Rate Commission hearing room, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001. The Conference will be held for the purposes specified in section 24 of the Commission's rules of practice (39 CFR 3001.24) and in this Notice and Order, and also to afford all participants in the proceeding an opportunity to be heard with respect to the procedures to be followed. The prehearing conference proceedings shall be recorded by an official reporter except where the presiding officer otherwise directs.

(C) Stephen A. Gold, the Director of the Office of Consumer Advocate, is designated to represent the general public in this proceeding. Service of documents on the Commission shall not constitute service on the OCA, who shall separately be served three copies of all documents.

(D) The Secretary shall cause this Notice and Order to be published in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

ATTACHMENT A—PRESENT AND PROPOSED RATES OF POSTAGE AND FEES FOR POSTAL SERVICES

[Rate Schedule 100—First Class Mail]

Mail type and Postage rate unit	Current rates [1] (cents)	Proposed rates (cents)
(1)–(2)	(3)	(4)
Letters		
Nonpresort		
First ounce		
Basic	25	30
Zip + 4	[2] [3] 24.1	[8] 28.8
Prebarcode	NA	[8] 27

ATTACHMENT A—PRESENT AND PROPOSED RATES OF POSTAGE AND FEES FOR POSTAL SERVICES—Continued

[Rate Schedule 100—First Class Mail]

Mail type and Postage rate unit	Current rates [1] (cents)	Proposed rates (cents)
(1)–(2)	(3)	(4)
Nonstandard Surcharge.	10	10
Additional ounce Presort [5]	[4] 20	[9] 23
First ounce		
3 and 5 Digit [6]		
Basic	21	26
Zip + 4	[3] 20.5	25.3
Prebarcode—3 Digit	NA	24.8
Prebarcode—5 Digit	20	24.3
Carrier Route [7]	19.5	24.5
Nonstandard Surcharge.	5	5
Additional ounces Cards	[4] 20	[9] 23
Nonpresort		
Basic	15	20
Zip + 4	[1] [3] 14	[8] 19
Prebarcode Presort	NA	[8] 18
3 and 5 Digit [6]		
Basic	13	18
Zip + 4	[3] 12.5	17.3
Prebarcode—3 Digit	NA	16.8
Prebarcode—5 Digit	12	16.3
Carrier Route [7]	11.5	16.5

[1] Currently Presorted First-Class Mail must be presented in a single mailing of at least 500 pieces properly prepared and presorted. The 5-Digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-Digit ZIP code or each piece of a group of 50 or more pieces destined for the same 3-Digit ZIP code. The lower carrier route rate applies only to mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of $60 must be paid once each calendar year at each office of mailing by any person who mails presorted First-Class Mail. The fee for mailers allows usage of either or both of these rates.

[2] Nonpresorted ZIP + 4 mail must be properly prepared and submitted in mailings of at least 250 pieces.

[3] ZIP + 4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP + 4 rates are not available for carrier route presort mail.

[4] Rate applies through 11 ounces. Heavier pieces are subject to Priority Mail rates.

[5] For presorted mailings weighing more than 2 ounces, subtract 4 cents per piece.

[6] Mail presorted to ZIP Code and prepared in mailings of 500 pieces or more as prescribed by the Postal Service.

[7] Mail presorted to carrier route and prepared in mailings of 500 pieces or more as prescribed by the Postal Service.

[8] Nonpresorted ZIP + 4 and prebarcode mail must be properly prepared and submitted in mailings of at least 250 pieces.

[9] Rate applies through 10 ounces. Heavier pieces are subject to Priority Mail rates.

RATE SCHEDULE 103(a)—PRIORITY MAIL RATES

[Dollars Current]

Postage rate units (pounds)	Rate [1]					
	Zones					
	Local 1, 2 & 3	4	5	6	7	8
2	2.40	2.40	2.40	2.40	2.40	2.40
3	2.74	3.16	3.45	3.74	3.96	4.32
4	3.18	3.75	4.13	4.53	4.92	5.33
5	3.61	4.32	4.86	5.27	5.81	6.37
6	4.15	5.08	5.71	6.31	6.91	7.66
7	4.58	5.66	6.39	7.09	7.80	8.67
8	5.00	6.23	7.07	7.87	8.68	9.68
9	5.43	6.81	7.76	8.66	9.57	10.69
10	5.85	7.39	8.44	9.44	10.45	11.70
11	6.27	7.97	9.12	10.22	11.33	12.71
12	6.70	8.55	9.81	11.01	12.22	13.72
13	7.12	9.12	10.49	11.79	13.10	14.73
14	7.55	9.70	11.17	12.57	13.99	15.47
15	7.97	10.28	11.86	13.36	14.87	16.75
16	8.39	10.86	12.54	14.14	15.75	17.75
17	8.82	11.44	13.22	14.92	16.64	18.76
18	9.24	12.01	13.90	15.70	17.52	19.77
19	9.67	12.59	14.59	16.49	18.41	20.78
20	10.09	13.17	15.27	17.27	19.29	21.79
21	10.51	13.75	15.95	18.05	20.17	22.80
22	10.94	14.33	16.64	18.84	21.06	23.81
23	11.36	14.90	17.32	19.62	21.94	24.82
24	11.79	15.48	18.00	20.40	22.83	25.83
25	12.21	16.06	18.69	21.19	23.71	26.84
26	12.63	16.64	19.37	21.97	24.59	27.84
27	13.06	17.22	20.05	22.75	25.48	28.85
28	13.48	17.79	20.73	23.53	26.36	29.86
29	13.91	18.37	21.42	24.32	27.25	30.87
30	14.33	18.95	22.10	25.10	28.13	31.88
31	14.75	19.53	22.78	25.88	29.01	32.89
32	15.18	20.11	23.47	26.67	29.90	33.90
33	15.60	20.68	24.15	27.45	30.78	34.91
34	16.03	21.26	24.83	28.23	31.67	35.92
35	16.45	21.84	25.52	29.02	32.55	36.93
36	16.87	22.42	26.20	29.80	33.43	37.93
37	17.30	23.00	26.88	30.58	34.32	38.94
38	17.72	23.57	27.56	31.36	35.20	39.95
39	18.15	24.15	28.25	32.15	36.09	40.96
40	18.57	24.73	28.93	32.93	36.97	41.97
41	18.99	25.31	29.61	33.71	37.85	42.98
42	19.42	25.89	30.30	34.50	38.74	43.99
43	19.84	26.46	30.98	35.28	39.62	45.00
44	20.27	27.04	31.66	36.06	40.51	46.01
45	20.69	27.62	32.35	36.85	41.39	47.02
46	21.11	28.20	33.03	37.63	42.27	48.02
47	21.54	28.78	33.71	38.41	43.16	49.03
48	21.96	29.35	34.39	39.19	44.04	50.04
49	22.39	29.93	35.08	39.98	44.93	51.05
50	22.81	30.51	35.76	40.76	45.81	52.06
51	23.23	31.09	36.44	41.54	46.69	53.07
52	23.66	31.67	37.13	42.33	47.58	54.08
53	24.08	32.24	37.81	43.11	48.46	55.09
54	24.51	32.82	38.49	43.89	49.35	56.10
55	24.93	33.40	39.18	44.68	50.23	57.11
56	25.35	33.98	39.86	45.46	51.11	58.11
57	25.78	34.56	40.54	46.24	52.00	59.12
58	26.20	35.13	41.22	47.02	52.88	60.13
59	26.63	35.71	41.91	47.81	53.77	61.14
60	27.05	36.29	42.59	48.59	54.65	62.15
61	27.47	36.87	43.27	49.37	55.53	63.16
62	27.90	37.45	43.96	50.16	56.42	64.17
63	28.32	38.02	44.64	50.94	57.30	65.18
64	28.75	38.60	45.32	51.72	58.19	66.19
65	29.17	39.18	46.01	52.51	59.07	67.20
66	29.59	39.76	46.69	53.29	59.95	68.20
67	30.02	40.34	47.37	54.07	60.84	69.21
68	30.44	40.91	48.05	54.85	61.72	70.22
69	30.87	41.49	48.74	55.64	62.61	71.23
70	31.29	42.07	49.42	56.42	63.49	72.24

[1] Exception: Parcles weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are charged a rate equal to that for a 15-pound parcel for the zone to which addressed.

RATE SCHEDULE 103(b)—PRIORITY MAIL RATES

[Dollars Proposed]

Postage rate units (pounds)	Rate [1] [2] [3] [4]					
	Zones					
	Local 1, 2 & 3	4	5	6	7	8
Up to						
2	2.75	2.75	2.75	2.75	2.75	2.75
3	3.60	3.60	3.60	3.60	3.60	3.60
4	4.15	4.15	4.15	4.15	4.15	4.15
5	5.15	5.15	5.15	5.15	5.15	5.15
6	5.15	5.60	5.90	6.70	7.60	8.60
7	5.15	6.25	6.65	7.60	8.60	9.80
8	5.15	6.95	7.35	8.45	9.60	11.00
9	5.50	7.60	8.05	9.30	10.65	12.20
10	5.90	8.25	8.75	10.15	11.65	13.45
11	6.30	8.90	9.50	11.00	12.65	14.65
12	6.75	9.55	10.20	11.90	13.70	15.85
13	7.15	10.25	10.90	12.75	14.70	17.05
14	7.55	10.90	11.65	13.60	15.70	18.25
15	7.95	11.55	12.35	14.45	16.75	19.45
16	8.40	12.20	13.05	15.35	17.75	20.65
17	8.80	12.85	13.80	16.20	18.80	21.85
18	9.20	13.55	14.50	17.05	19.90	23.05
19	9.60	14.20	15.20	17.90	20.80	24.25
20	10.05	14.85	15.90	18.75	21.85	25.50
21	10.45	15.50	16.65	19.65	22.85	26.70
22	10.85	16.15	17.35	20.50	23.85	27.90
23	11.25	16.85	18.05	21.35	24.90	29.10
24	11.70	17.50	18.80	22.20	25.90	30.30
25	12.10	18.15	19.50	23.05	26.90	31.50
26	12.50	18.80	21.20	23.95	27.95	32.70
27	12.90	19.45	40.95	24.80	28.95	33.90
28	13.35	20.15	21.65	25.65	30.00	35.10
29	13.75	20.80	22.35	26.50	31.00	36.30
30	14.15	21.45	23.05	27.40	32.00	37.55
31	14.60	22.10	23.80	28.25	33.05	38.75
32	15.00	22.75	24.50	29.10	34.05	39.95
33	15.40	23.45	25.20	29.95	35.05	41.15
34	15.80	24.10	25.95	30.80	36.10	42.35
35	16.25	24.75	26.65	31.70	37.10	43.55
36	16.65	25.40	27.35	32.55	38.10	44.75
37	17.05	26.05	28.10	33.40	39.15	45.95
38	17.45	26.75	28,80	34.25	40.15	47.15
39	17.90	27.40	29.50	35.15	41.15	48.35
40	18.30	38.05	30.20	36.00	42.20	49.60
41	18.70	38.70	30.95	36.85	43.20	50.80
42	19.10	29.35	31.65	37.70	44.25	52.00
43	19.55	30.05	34.35	38.55	45.25	53.20
44	19.95	30.70	33.10	39.45	46.25	54.40
45	20.35	31.35	33.80	40.30	47.30	55.60
46	20.75	32.00	34.50	41.15	48.30	56.80
47	21.20	32.65	35.25	42.00	49.30	58.00
48	21.60	33.35	35.95	42.90	50.35	59.20
49	22.00	34.00	36.65	43.75	51.35	60.40
50	22.40	34.65	37.35	44.60	52.35	61.65
51	22.85	35.30	38.10	45.45	53.40	62.85
52	23.25	35.95	38.80	46.30	54.40	64.05
53	23.65	36.65	39.55	47.20	55.45	65.25
54	24.10	37.30	40.25	48.05	56.45	66.45
55	24.50	37.95	40.95	48.90	57.45	67.65
56	24.90	38.60	41.65	49.75	58.50	68.85
57	25.30	39.25	42.40	50.65	59.50	70.05
58	25.75	39.95	43.10	51.50	60.50	71.25
59	26.15	40.60	43.80	52.35	61.55	72.45
60	26.55	41.25	44.50	53.20	62.55	73.70
61	26.95	41.90	45.25	54.05	63.55	74.90
62	27.40	42.55	45.95	54.95	64.60	76.10
63	27.80	43.25	46.65	55.80	65.60	77.30
64	28.20	43.90	47.40	56.65	66.60	78.50
65	28.60	44.55	48.10	57.50	67.65	79.70
66	29.05	45.20	48.80	58.40	68.65	80.90
67	29.45	45.85	49.55	59.25	69.65	82.10
68	29.85	46.55	50.25	60.10	70.70	83.30
69	30.25	47.20	50.95	60.95	71.70	84.50
70	30.70	47.85	51.65	61.80	72.75	85.75

[1] Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are charged a rate equal to that for a 15-pound parcel for the zone to which addressed.

[2] Add $4.50 for each pickup stop.

[3] The applicable 2-pound rate is charged for matter sent in a flat rate envelope provided by the Postal Service.

[4] A presort document of 10 cents per piece applies to mailings of 300 or more pieces that meet applicable Postal Service regulations.

RATE SCHEDULE 200—SECOND-CLASS MAIL: REGULAR RATE PUBLICATIONS [1] [13]

	Postage rate unit	Full rates [2]	
		Current (cents)	Proposed (cents)
Per pound:			
Non-advertising portion Zoned Pound Rates:	Pound	12.4	([3])
Delivery Office [12]	Pound		[3] 14.5
Zone: SCF	Pound		[3] 16.5
1 & 2 [4]	Pound	[5] 16.5	[5] 20.1
3	Pound	17.4	20.9
4	Pound	19.1	23.0
5	Pound	21.6	26.1
6	Pound	24.3	27.5
7	Pound	27.5	33.5
8	Pound	30.2	36.9
Per Piece:			
A—Prepared [6]	Piece	16.0	20.1
B—Presorted to 3-digit city/5-digit ZIP code	Piece	12.4	15.5
C-Carrier-route presort	Piece	9.9	11.9
SCF Difference [7]	Piece	(1.0)	..
Non-advertising Benefits:			
Reduction [8]	Piece	(4.0)	(5.0)
Reduction [9]	Pound		(7.5)
ZIP+4 Discounts: [10]			
A—Prepared	Piece		(1.4)
B—Presorted to 3-digit city/5-digit ZIP Code	Piece		(0.7)
Bacode Discounts: [10]			
A—Prepared	Piece		(2.4)
B—3-Digit	Piece		(1.5)
B—5-Digit	Piece		(2.2)
Saturation Discount [11]	Piece		(2.0)

[1] The rates in this schedule also apply to commingled non-subscriber, non-requester, complimentary, and sample copies in excess of the 10 percent allowance in regular-rate, nonprofit, and classroom second-class mail.
[2] Charges are computed by adding the appropriate per-piece charge to the sum of the non-advertising portion and the advertising portion charge, as applicable.
[3] Under proposed rates, the full weight of the publication pays the zoned pound rates shown below.
[4] Under proposed rates, the zones 1 & 2 pound rate does not apply to mail entered under the delivery office or the SCF pound rate.
[5] Full rate for advertising portion of science-of-agriculture publications mailed to zones 1 & 2 is currently 11.4 cents per pound. The proposed full rate is 7.1 cents per pound for delivery office entry, 9.1 cents per pound for SCF, and 12.6 cents per pound for zones 1 and 2.
[6] Presorted to 3-digit (other than 3-digit city), SCF, states, mixed states.
[7] Applies to mail destinating in the originating SCF area. The piece difference is subtracted from the applicable piece rate.
[8] Per-piece rate reduction equals this rate times the proportion of the publication which is non-advertising.
[9] Per-pound rate reduction equals this rate times the pounds of non-advertising material.
[10] For letter size pieces meeting applicable Postal Service regulations.
[11] For walk sequenced pieces meeting applicable Postal Service regulations.
[12] Applicable only to carrier route presort and saturation mail.
[13] Rates do not apply to otherwise regular rate mail that qualifies for the In-County rates in Schedule 201.

RATE SCHEDULE 201—SECOND-CLASS MAIL: IN-COUNTY FULL (ATTRIBUTABLE COST) RATE LEVELS

	Full rates	
	Current (cents)	Proposed (cents)
Per Pound:		
General	9.4	12.4
Delivery Office [1]	NA	10.4
Per Piece:		
Required Presort	5.7	7.7
Carrier route Presort	3.2	3.9
ZIP + 4 Discounts: [2]		
A—Prepared		(1.4)
B—Presorted to 3-Digit city/5-Digit ZIP Code		(0.7)
Barcode Discounts: [3]		
A—Prepared		(2.4)
B—3-Digit		(1.5)
B—5-Digit		(2.2)
Saturation Discount [3]		(2.0)

[1] Applicable only to carrier route presort and saturation mail.
[2] For letter size pieces meeting applicable Postal Service regulations.
[3] For walk sequenced pieces meeting applicable Postal Service regulations.

RATE SCHEDULE 202—SECOND-CLASS MAIL: PUBLICATIONS OF AUTHORIZED NONPROFIT ORGANIZATIONS [1] [14]

Full (Attributable Cost) Rate Levels

	Postage rate unit	Full rates [2]	
		Current (cents)	Proposed (cents)
Per Pound:			
Non-advertising portion	Pound	8.6	[4]
Zoned pound rates: [3]			
Delivery office [13]	Pound		7.1
Zone: SCF	Pound		9.1
1 & 2 [5]	Pound	11.4	12.6
3	Pound	12.0	13.3
4	Pound	13.3	15.2
5	Pound	15.3	18.0
6	Pound	17.4	20.9
7	Pound	19.9	24.5
8	Pound	22.1	27.5
Per piece:			
A—Prepared [6]	Piece	12.5	16.8
B—Presorted to 3-digit city/5-digit ZIP Code	Piece	8.9	12.2
C—Carrier-route presort	Piece	6.8	9.3
SCF difference [7]	Piece	(1.0)	
Non-advertising benefits:			
Reduction [8] [10]	Piece	(2.0)	(3.5)
Reduction [9] [10]	Pound		(5.0)
ZIP+4 discounts: [11]			
A—Prepared	Piece		(1.4)
B—Presorted to 3-digit city/5-digit ZIP Code	Piece		(0.7)
Barcode discounts: [11]			
A—Prepared	Piece		(2.4)
B—3-digit	Piece		(1.5)
C—5-digit	Piece		(2.2)
Saturation discount [12]	Piece		(2.0)

[1] These rates apply to second-class mail which is entered by authorized nonprofit organizations or associations.
[2] Charges are computed by adding the per-piece charge to the sum of the nonadvertising portion charge and the advertising portion charge, as applicable.
[3] Under current rates, zoned pound rates are not applicable to publications containing 10 percent or less advertising content. The non-advertising pound rate is paid for the publication's full weight.
[4] Under the proposed rates, the full weight of the publication pays the zoned pound charges shown below.
[5] Under proposed rates, the zones 1 & 2 pound rate does not apply to mail entered under the delivery office or the SCF pound rate.
[6] Presorted to 3-digit (other than 3-digit city), SCF, states, mixed states.
[7] Applies to mail destinating in the originating SCF area. The difference is subtracted from the applicable piece rate.
[8] Per-piece rate reduction equals this rate times the proportion of the publication which is non-advertising.
[9] Per-pound rate reduction equals this rate times the pounds of non-advertising material.
[10] Under the proposed rates, publications with 10 percent or less advertising receive these rate reductions as though they had no advertising.
[11] For letter size pieces meeting applicable Postal Service regulations.
[12] For walk sequenced pieces meeting applicable Postal Service regulations.
[13] Applicable only to carrier route presort and saturation mail.
[14] Rates do not apply to otherwise non-profit mail that qualifies for the In-Country rates in Schedule 201.

RATE SCHEDULE 203—SECOND-CLASS MAIL: CLASSROOM PUBLICATIONS [11]

Full (Attributable Cost) Rate Levels

	Postage rate unit	Full rates [1]	
		Current (cents)	Proposed (cents)
Per pound:			
Non-advertising portion	Pound	6.7	[10]
Zoned pound rates: [4]			
Delivery Office [7]	Pound		7.1
Zone: SCF [3]	Pound		9.1
1 & 2 [5]	Pound	8.9	12.6
3	Pound	9.4	13.3
4	Pound	10.2	15.2
5	Pound	11.4	18.0
6	Pound	12.6	20.9
7	Pound	14.1	24.5
8	Pound	15.4	27.5
Per piece:			
A—Prepared	Piece	12.3	16.8
B—Presorted to 3-digit city/5-digit ZIP Code	Piece		12.2
C—Carrier-route presort	Piece		9.3
SCF difference	Piece	(1.0)	
Non-advertising benefits:			
Reduction [8] [9]	Piece	(4.0)	(3.5)
Reduction [9] [8]	Pound		(5.0)
ZIP+4 discounts: [5]			
A—Prepared	Piece		(1.4)
B—Presorted to 3-digit city/5-digit ZIP Code	Piece		(0.7)

RATE SCHEDULE 203—SECOND-CLASS MAIL: CLASSROOM PUBLICATIONS [11]—Continued

Full (Attributable Cost) Rate Levels

	Postage rate unit	Full rates [1]	
		Current (cents)	Proposed (cents)
Barcode discounts: [5]			
A—Prepared	Piece		(2.4)
B—3-digit	Piece		(1.5)
C—5-digit	Piece		(2.2)
Saturation discount [6]	Piece		(2.0)

[1] Charges are computed by adding the per-piece charge to the sum of the non-advertising portion charge and the advertising portion charge, as applicable.
[2] Under proposed rates, the zones 1 & 2 pound rate does not apply to mail entered under the delivery office or the SCF pound rate.
[3] Applies to mail destinating in the originating SCF area. The difference is subtracted from the applicable piece rate.
[4] Per-piece rate reduction equals this rate times the proportion of the publication which is non-advertising.
[5] For letter size pieces meeting applicable Postal Service regulations.
[6] For walk sequenced pieces meeting applicable Postal Service regulations.
[7] Applicable only to carrier route presort and saturation mail.
[8] Under the proposed rates, publications with 10 percent or less advertising receive these reductions as though they had no advertising.
[9] Per-pound rate reduction equals this rate times the pounds of non-advertising pounds.
[10] Under the proposed rates, the full weight of the publication pays the zoned pound rates shown below.
[11] Rates do not apply to otherwise classroom mail that qualifies for the In-Country rates in Schedule 201.

RATE SCHEDULE 300—THIRD-CLASS MAIL SINGLE PIECE

	Rate [1]	
	Current (cents)	Proposed (cents)
Single piece:		
One ounce	25	30
Two ounces	45	53
Three ounces	65	76
Four ounces	85	99
Five and six ounces	100	117
Each additional 2 ounces	10	12
Nonstandard surcharge [2]	10	10
Keys and identification devices:		
First 2 ounces	85	93
Each additional 2 ounces	47	51

[1] When the postage rate computed at the single piece third-class rate is higher than the rate prescribed in the corresponding fourth-class category for which the piece qualifies, the applicable lower fourth-class rate is charged.
[2] Applies only to pieces weighing 1 ounce or less.

RATE SCHEDULE 301(a)—THIRD-CLASS MAIL REGULAR BULK; CURRENT

	Rate
	Current (cents)
Bulk Rate Structure [1]	
Per pound, required presortation	48 plus 6.6
Per pound, presorted to 5-digit ZIP Code	48 plus 3.1
Per pound, presorted to carrier route	48.0
Minimum per piece, required presortation	16.7
Minimum per piece, presorted to 5-digits	13.2
Minimum per piece, presorted to carrier route	10.1
ZIP + 4 Mail:	
Minimum per piece:	
Required presortation	16.2
Presorted to five-digits	12.7
Prebarcoded and presorted to five-digits	12.2

[1] Currently, a fee of $60 must be paid once every twelve months for each bulk mailing permit.

RATE SCHEDULE 301(b)—THIRD-CLASS MAIL REGULAR BULK [1]; PROPOSED

	Rate
	Proposed (cents)
Letters	
Piece Rate	18.5.
Discounts (Per Piece):	
Destination Entry	
BMC	1.2.
SCF	1.7.
Delivery Office [2]	2.2
Presort Level	
3/5 Digit	3.1.
Carrier Route	6.2.
Saturation	7.2.
Automation [3]	
ZIP + 4 [4]	
Basic	1.4.
3/5 Digit [5]	0.7.
Barcode [4]	
Basic	2.4.
3-Digit [5]	1.5.
5-Digit [5]	2.2.
Non-Letters	
Piece Rate [6]	22.0.
Discounts (Per Piece):	
Destination Entry	
BMC	1.2.
SCF	1.7.
Delivery Office [2]	2.2

RATE SCHEDULE 301(b)—THIRD-CLASS MAIL REGULAR BULK [1]; PROPOSED—Continued

	Rate
	Proposed (cents)
Presort Level	
3/5 Digit	4.5.
Carrier Route	8.6.
Saturation	10.7.
Pound Rate [6]	53.7 plus.
	10.7 per piece.
Discounts:	
Destination Entry (Per Pound)	
BMC	5.8.
SCF	8.1.
Delivery Office [2]	10.4.
Presort Level (Per Piece)	
3/5 Digit	4.5.
Carrier Route	8.6.
Saturation	10.7.

[1] The proposed bulk fee is $75.
[2] Applies only to carrier route presort and saturation mail.
[3] For letter size pieces meeting applicable Postal Service regulations.
[4] Among ZIP+4 and barcode discounts, only one discount may be applied.
[5] Deducted from otherwise applicable 3/5-digit rate.
[6] Mailer pays either the piece or the pound rate, which ever is higher.

RATE SCHEDULE 302(a)—THIRD-CLASS MAIL NONPROFIT BULK; CURRENT FULL (ATTRIBUTABLE COST) RATE LEVELS

	Rate
	Current (cents)
Nonprofit Bulk Rate Structure [1]	
Per pound, required presortation.	25.0 plus 3.1 cents per piece.
Per pound, presorted to 5-digit ZIP Code.	25.0 plus 2.3 cents per piece.
Per pound, presorted to carrier route.	25.0
Minimum per piece, required presortation.	8.4
Minimum per piece, presorted to 5-digits.	7.6
Minimum per piece, presorted to carrier route.	5.3
ZIP + 4 Mail	
Minimum per piece:	
Required presortation	7.9
Presorted to five-digits	7.1
Prebarcoded and presorted to five-digits.	6.6

[1] Currently, a fee of $60 must be paid once every twelve months for each bulk mailing permit.

RATE SCHEDULE 302(b)—THIRD-CLASS MAIL NONPROFIT BULK [1]; PROPOSED

	Rate
	Proposed (cents)
Letters	
Piece Rate	11.0.
Discounts (per piece):	
Destination Entry	
BMC	1.2.
SCF	1.7
Delivery Office [2]	2.2
Presort Level	
3/5 Digit	1.3.
Carrier Route	3.7
Saturation	4.0
Automation [3]	
ZIP+4 [4]	
Basic	1.1.
3/5 Digit [5]	0.6.
Barcode [4]	
Basic	2.0.
3-Digit [5]	1.4.
5-Digit [5]	2.2.
Non-Letters	
Piece Rate [6]	12.5.
Discounts (Per Piece)	
Destination Entry	
BMC	1.2.
SCF	1.7.
Delivery Office [2]	2.2.
Presort Level	
3/5 Digit	1.4.
Carrier Route	4.5.
Saturation	5.5.
Pound Rate [6]	33.1 plus. 5.5 per piece.

RATE SCHEDULE 302(b)—THIRD-CLASS MAIL NONPROFIT BULK [1]; PROPOSED—Continued

	Rate
	Proposed (cents)
Discounts:	
Destination Entry (Per Pound)	
BMC	5.8.
SCF	8.1.
Delivery Office [2]	10.4.
Presort Level (Per Piece)	
3/5	1.4.
Carrier Route	4.5.
Saturation	5.5.

[1] The proposed bulk fee is $75.
[2] Applies only to carrier route presort and saturation mail.
[3] For letter size pieces meeting applicable Postal Service regulations.
[4] Among ZIP+4 and barcode discounts, only one discount may be applied.
[5] Deducted from otherwise applicable 3/5-digit rate.
[6] Mailer pays either the piece rate or the pound rate, which ever is higher.

Rate Schedule 400—Fourth-Class Mail: Parcel Post

Current rates are shown on schedules 400(a)(1) and 400(a)(2).

Proposed rates are shown on schedules 400(b)(1), 400(b)(2), and 400(c).

RATE SCHEDULE 400(a)(1)—PARCEL POST—INTRA BMC/ASF SERVICE CURRENT RATES

[Dollars]

Postage rate units (pounds)	Rate				
	Zones				
	Local	1&2	3	4	5
2	1.43	1.49	1.61	1.77	2.04
3	1.48	1.58	1.75	2.00	2.39
4	1.54	1.66	1.90	2.22	2.74
5	1.59	1.75	2.05	2.45	3.09
6	1.65	1.84	2.19	2.67	3.44
7	1.71	1.92	2.33	2.90	3.80
8	1.76	2.01	2.48	3.12	4.15
9	1.82	2.10	2.62	3.35	4.50
10	1.87	2.18	2.77	3.58	4.85
11	1.93	2.27	2.91	3.80	5.20
12	1.99	2.36	3.05	4.02	5.55
13	2.04	2.44	3.20	4.24	5.90
14	2.08	2.49	3.28	4.36	6.07
15	2.12	2.55	3.35	4.47	6.24
16	2.15	2.59	3.43	4.58	6.40
17	2.19	2.64	3.50	4.68	6.55
18	2.22	2.69	3.56	4.78	6.70
19	2.26	2.73	3.63	4.87	6.83
20	2.29	2.78	3.69	4.96	6.96
21	2.32	2.82	3.75	5.05	7.09
22	2.36	2.86	3.81	5.13	7.21
23	2.39	2.90	3.87	5.21	7.33
24	2.42	2.94	3.92	5.29	7.44
25	2.45	2.98	3.98	5.36	7.55
26	2.48	3.02	4.03	5.44	7.65
27	2.51	3.06	4.08	5.51	7.76
28	2.54	3.09	4.13	5.58	7.85
29	2.57	3.13	4.18	5.65	7.95
30	2.60	3.17	4.23	5.71	8.05
31	2.63	3.20	4.28	5.78	8.14
32	2.66	3.24	4.33	5.84	8.23
33	2.69	3.27	4.38	5.90	8.31
34	2.72	3.31	4.42	5.96	8.40

RATE SCHEDULE 400(a)(1)—PARCEL POST—INTRA BMC/ASF SERVICE CURRENT RATES—Continued

[Dollars]

Postage rate units (pounds)	Rate				
	Zones				
	Local	1&2	3	4	5
35	2.75	3.34	4.47	6.02	8.48
36	2.78	3.38	4.51	6.08	8.57
37	2.80	3.41	4.55	6.14	8.65
38	2.83	3.44	4.60	6.20	8.72
39	2.86	3.48	4.64	6.26	8.80
40	2.89	3.51	4.68	6.31	8.88
41	2.92	3.54	4.73	6.37	8.95
42	2.94	3.58	4.77	6.42	9.93
43	2.97	3.61	4.81	6.47	9.10
44	3.00	3.64	4.85	6.52	9.17
45	3.03	3.67	4.89	6.58	9.24
46	3.05	3.70	4.93	6.63	9.31
47	3.08	3.73	4.97	6.68	9.38
48	3.11	3.76	5.01	6.73	9.44
49	3.13	3.80	5.04	6.78	9.51
50	3.16	3.83	5.08	6.83	9.57
51	3.19	3.86	5.12	6.87	9.64
52	3.12	3.89	5.16	6.92	9.70
53	3.24	3.92	5.20	6.97	9.77
54	3.27	3.95	5.23	7.01	9.83
55	3.29	3.98	5.27	7.06	9.89
56	3.32	4.01	5.31	7.11	9.95
57	3.35	4.04	5.34	7.15	10.01
58	3.37	4.07	5.38	7.20	10.07
59	3.40	4.10	5.41	7.24	10.13
60	3.43	4.13	5.45	7.29	10.18
61	3.45	4.16	5.49	7.33	10.24
62	3.48	4.18	5.52	7.37	10.30
63	3.50	4.21	5.56	7.42	10.35
64	3.53	4.24	5.59	7.46	10.41
65	3.55	4.27	5.63	7.50	10.47
66	3.58	4.30	5.66	7.54	10.52
67	3.61	4.33	5.69	7.59	10.57
68	3.63	4.36	5.73	7.63	10.63
69	3.66	4.39	5.76	7.67	10.68
70	3.68	4.41	5.80	7.71	10.73

RATE SCHEDULE 400(b)(1)—PARCEL POST—INTRA BMC/ASF SERVICE PROPOSED RATES

[Dollars]

Postage rate units (pounds)	Rate				
	Zones				
	Local	1&2	3	4	5
2	1.71	1.88	2.03	2.20	2.53
3	1.74	2.00	2.23	2.48	2.98
4	1.76	2.11	2.42	2.76	3.43
5	1.78	2.22	2.61	3.04	3.89
6	1.80	2.33	2.80	3.32	4.34
7	1.82	2.44	2.99	3.60	4.79
8	1.85	2.55	3.18	3.88	5.25
9	1.87	2.67	3.38	4.16	5.70
10	1.89	2.78	3.57	4.44	6.15
11	1.91	2.90	3.79	4.76	6.67
12	1.93	3.00	3.95	5.00	7.06
13	1.96	3.08	4.08	5.19	7.38
14	1.98	3.16	4.21	5.36	7.63
15	2.00	3.23	4.32	5.53	7.89
16	2.02	3.30	4.43	5.68	8.14
17	2.04	3.36	4.53	5.83	8.36
18	2.07	3.42	4.63	5.97	8.58
19	2.09	3.48	4.73	6.10	8.79
20	2.11	3.54	4.82	6.23	8.99
21	2.13	3.60	4.90	6.35	9.17
22	2.15	3.65	4.99	6.46	9.36
23	2.18	3.71	5.07	6.58	9.53
24	2.20	3.76	5.15	6.69	9.70
25	2.22	3.81	5.23	6.79	9.86
26	2.24	3.86	5.30	6.89	10.01
27	2.26	3.91	5.37	6.99	10.17

RATE SCHEDULE 400(b)(1)—PARCEL POST—INTRA BMC/ASF SERVICE PROPOSED RATES—Continued

[Dollars]

Postage rate units (pounds)	Rate				
	Zones				
	Local	1&2	3	4	5
28	2.28	3.96	5.45	7.09	10.31
29	2.31	4.00	5.51	7.18	10.45
30	2.33	4.05	5.58	7.28	10.59
31	2.35	4.10	5.65	7.36	10.73
32	2.37	4.14	5.71	7.45	10.86
33	2.39	4.18	5.78	7.54	10.98
34	2.42	4.23	5.84	7.62	11.11
35	2.44	4.27	5.90	7.70	11.23
36	2.46	4.33	6.00	7.83	11.44
37	2.48	4.37	6.05	7.91	11.54
38	2.50	4.41	6.10	7.97	11.64
39	2.53	4.45	6.15	8.04	11.74
40	2.55	4.48	6.21	8.11	11.84
41	2.57	4.52	6.26	8.18	11.93
42	2.59	4.56	6.31	8.24	12.03
43	2.61	4.60	6.36	8.30	12.12
44	2.64	4.63	6.41	8.37	12.21
45	2.66	4.67	6.45	8.42	12.29
46	2.68	4.70	6.49	8.48	12.37
47	2.70	4.73	6.54	8.53	12.44
48	2.72	4.76	6.58	8.59	12.52
49	2.75	4.80	6.62	8.64	12.59
50	2.77	4.83	6.66	8.69	12.66
51	2.79	4.86	6.71	8.74	12.74
52	2.81	4.89	6.75	8.80	12.81
53	2.83	4.93	6.79	8.85	12.88
54	2.86	4.96	6.83	8.90	12.95
55	2.88	4.99	6.87	8.95	13.01
56	2.90	5.02	6.91	9.00	13.08
57	2.92	5.05	6.95	9.04	13.15
58	2.94	5.08	6.99	9.09	13.21
59	2.97	5.11	7.03	9.14	13.28
60	2.99	5.15	7.07	9.19	13.34
61	3.01	5.18	7.10	9.23	13.41
62	3.03	5.21	7.14	9.28	13.47
63	3.05	5.24	7.18	9.33	13.53
64	3.07	5.27	7.22	9.37	13.59
65	3.10	5.30	7.25	9.42	13.66
66	3.12	5.33	7.29	9.46	13.72
67	3.14	5.36	7.33	9.51	13.78
68	3.16	5.39	7.37	9.55	13.84
69	3.18	5.42	7.40	9.60	13.89
70	3.21	5.45	7.44	9.64	13.95

Add $4.50 for each pickup stop.

RATE SCHEDULE 400(a)(2)—PARCEL POST—INTER BMC/ASF SERVICE

[Current Rates (Dollars)]

Postage rate units (pounds)	Rates						
	Zones						
	1 & 2	3	4	5	6	7	8
Up to							
2	1.69	1.81	1.97	2.24	2.35	2.35	2.35
3	1.78	2.95	2.20	2.59	2.98	3.42	4.25
4	1.86	2.10	2.42	2.94	3.46	4.05	5.25
5	1.95	2.24	2.65	3.29	3.94	4.67	6.25
6	2.04	2.39	2.87	3.64	4.43	5.30	7.34
7	2.12	2.53	3.10	4.00	4.91	5.92	8.30
8	2.21	2.68	3.32	4.35	5.49	6.55	9.26
9	2.30	2.82	3.55	4.70	5.87	7.17	10.22
10	2.38	2.97	3.78	5.05	6.35	7.79	11.18
11	2.47	3.11	4.00	5.40	6.83	8.42	12.14
12	2.56	3.25	4.22	5.75	7.30	9.03	13.09
13	2.64	3.40	4.44	6.10	7.78	9.65	14.03
14	2.69	3.48	4.56	6.27	8.02	9.96	14.50
15	2.75	3.55	4.67	6.44	8.24	10.24	14.94
16	2.79	3.63	4.78	6.60	8.45	10.52	15.35
17	2.84	3.70	4.88	6.75	8.66	1077	15.74
18	2.89	3.76	4.98	6.90	8.85	11.02	16.11

RATE SCHEDULE 400(a)(2)—PARCEL POST—INTER BMC/ASF SERVICE—Continued

[Current Rates (Dollars)]

Postage rate units (pounds)	Rates						
	Zones						
	1 & 2	3	4	5	6	7	8
19	2.93	3.83	5.07	7.03	9.03	11.25	16.45
20	2.98	3.89	5.16	7.16	9.20	11.47	16.79
21	3.02	3.95	5.25	7.29	9.37	11.68	17.10
22	3.06	4.01	5.33	7.41	9.53	11.88	17.41
23	3.10	4.07	5.41	7.53	9.68	12.08	17.70
24	3.14	4.12	5.49	7.64	9.83	12.26	17.97
25	3.18	4.18	5.56	7.75	9.97	12.44	18.24
26	3.22	4.23	5.64	7.85	10.11	12.62	18.50
27	3.26	4.28	5.71	7.96	10.24	12.79	18.75
28	3.29	4.33	5.78	8.05	10.37	12.95	18.99
29	3.33	4.38	5.85	8.15	10.50	13.11	19.23
30	3.37	4.43	5.91	8.25	10.62	13.26	19.45
31	3.40	4.48	5.98	8.34	10.74	13.41	19.67
32	3.44	4.53	6.04	8.43	10.85	13.56	19.89
33	3.47	4.58	6.10	8.51	10.97	13.70	20.10
34	3.51	4.62	6.16	8.60	11.08	13.83	20.30
35	3.54	4.67	6.22	8.68	11.18	13.97	20.50
36	3.58	4.71	6.28	8.77	11.29	14.10	20.69
37	3.61	4.76	6.34	8.85	11.39	14.23	20.88
38	3.64	4.80	6.40	8.92	11.49	14.35	21.06
39	3.68	4.84	6.46	9.00	11.59	14.48	21.24
40	3.71	4.88	6.51	9.08	11.69	14.60	21.41
41	3.74	4.93	6.57	9.15	11.79	14.72	21.58
42	3.78	4.97	6.62	9.23	11.88	14.83	21.75
43	3.81	5.01	6.67	9.30	11.97	14.94	21.92
44	3.84	5.05	6.72	9.37	12.06	15.06	22.08
45	3.87	5.09	6.78	9.44	12.15	15.16	22.24
46	3.90	5.13	6.83	9.51	12.24	15.27	22.39
47	3.93	5.17	6.88	9.58	12.32	15.38	22.54
48	3.96	5.21	6.93	9.64	12.41	15.48	22.69
49	4.00	5.24	6.98	9.71	12.49	15.58	22.84
50	4.03	5.28	7.03	9.77	12.57	15.68	22.98
51	4.06	5.32	7.07	9.84	12.65	15.78	23.12
52	4.09	5.36	7.12	9.90	12.73	15.88	23.26
53	4.12	5.40	7.17	9.97	12.81	15.98	23.40
54	4.14	5.43	7.21	10.03	12.89	16.07	23.54
55	4.18	5.47	7.26	10.09	12.96	16.16	23.67
56	4.21	5.51	7.31	10.15	13.04	16.26	23.80
57	4.24	5.54	7.35	10.21	13.11	16.35	23.93
58	4.27	5.58	7.40	10.27	13.19	16.44	24.06
59	4.30	5.61	7.44	10.33	13.26	16.53	24.18
60	4.33	5.65	7.49	10.38	13.33	16.61	24.31
61	4.36	5.69	7.53	10.44	13.40	16.70	24.43
62	4.38	5.72	7.57	10.50	13.47	16.78	24.55
63	4.41	5.76	7.62	10.55	13.54	16.87	24.67
64	4.44	5.79	7.66	10.61	13.61	16.95	24.78
65	4.47	5.83	7.70	10.67	13.68	17.03	24.90
66	4.50	5.86	7.74	10.72	13.75	17.12	25.02
67	4.53	5.89	7.79	10.77	13.81	17.20	25.13
68	4.56	5.93	7.83	10.83	13.88	17.28	25.24
69	4.59	5.96	7.87	10.88	13.95	17.36	25.35
70	4.61	6.00	7.91	10.93	14.01	17.43	25.46

For nonmachinable inter-BMC parcels, add $1.15.

RATE SCHEDULE 400(b)(2)—PARCEL POST—INTER BMC/ASF SERVICE

[Proposed Rates (Dollars)]

Postage rate units (pounds)	Rate						
	Zones						
	1 & 2	3	4	5	6	7	8
2	2.15	2.30	2.47	2.70	2.70	2.70	2.70
3	2.27	2.50	2.75	3.25	3.55	3.55	3.55
4	2.38	2.69	3.03	3.70	4.10	4.10	4.10
5	2.49	2.88	3.31	4.16	5.00	5.10	5.10
6	2.60	3.07	3.59	4.61	5.62	7.09	8.55
7	2.71	3.26	3.87	5.06	6.25	7.97	9.75
8	2.82	3.45	4.15	5.52	6.87	8.84	10.95
9	2.94	3.65	4.43	5.97	7.50	9.72	12.15
10	3.05	3.84	4.71	6.42	8.12	10.59	13.40

RATE SCHEDULE 400(b)(2)—PARCEL POST—INTER BMC/ASF SERVICE—Continued

[Proposed Rates (Dollars)]

Postage rate units (pounds)	Rate						
	Zones						
	1 & 2	3	4	5	6	7	8
11	3.17	4.06	5.03	6.94	8.84	11.61	14.60
12	3.27	4.22	5.27	7.33	9.37	12.35	15.80
13	3.35	4.35	5.46	7.69	9.78	12.92	17.00
14	3.43	4.48	5.63	7.90	10.16	13.44	18.20
15	3.50	4.59	5.80	8.16	10.51	13.93	19.40
16	3.57	4.70	5.95	8.41	10.84	14.39	20.60
17	3.63	4.80	6.10	8.63	11.15	14.82	21.80
18	3.69	4.90	6.24	8.85	11.45	15.23	23.00
19	3.75	5.00	6.37	9.06	11.73	15.62	24.20
20	3.81	5.09	6.50	9.26	12.00	15.99	25.45
21	3.87	5.17	6.62	9.44	12.25	16.34	26.30
22	3.92	5.26	6.73	9.63	12.50	16.68	26.87
23	3.98	5.34	6.85	9.80	12.73	17.00	27.40
24	4.03	5.42	6.96	9.97	12.96	17.31	27.92
25	4.08	5.50	7.06	10.13	13.17	17.61	28.42
26	4.13	5.57	7.16	10.28	13.38	17.90	28.89
27	4.18	5.64	7.26	10.44	13.59	18.17	29.35
28	4.23	5.72	7.36	10.58	13.78	18.44	29.80
29	4.27	5.78	7.45	10.72	13.97	18.70	30.23
30	4.32	5.85	7.55	10.86	14.16	18.95	30.64
31	4.37	5.92	7.63	11.00	14.33	19.20	31.04
32	4.41	5.98	7.72	11.13	14.51	19.43	31.43
33	4.45	6.05	7.81	11.25	14.68	19.66	31.81
34	4.50	6.11	7.89	11.38	14.84	19.89	32.18
35	4.54	6.17	7.97	11.50	15.00	20.11	32.54
36	4.60	6.27	8.10	11.71	15.29	20.50	33.20
37	4.64	6.32	8.18	11.81	15.42	20.68	33.49
38	4.68	6.37	8.24	11.91	15.25	20.86	33.79
39	4.72	6.42	8.31	12.01	15.68	21.03	34.07
40	4.75	6.48	8.38	12.11	15.81	21.21	34.35
41	4.79	6.53	8.45	12.20	15.94	21.37	34.62
42	4.83	6.58	8.51	12.30	16.06	21.54	34.08
43	4.87	6.63	8.57	12.39	16.18	21.70	35.14
44	4.90	6.68	8.64	12.48	16.30	21.85	35.40
45	4.94	6.72	8.69	12.56	16.40	21.99	35.61
46	4.97	6.76	8.75	12.64	16.50	22.12	35.82
47	5.00	6.81	8.80	12.71	16.60	22.25	36.03
48	5.03	6.85	8.86	12.79	16.69	22.38	36.23
49	5.07	6.89	8.91	12.86	16.79	22.50	36.43
50	5.10	6.93	8.96	12.93	16.88	22.63	36.43
51	5.13	6.98	9.01	13.01	16.97	22.75	36.82
52	5.16	7.02	9.07	13.08	17.06	22.87	37.00
53	5.20	7.06	9.12	13.15	17.15	22.98	37.19
54	5.23	7.10	9.17	13.22	17.24	23.10	37.37
55	5.26	7.14	9.22	13.28	17.33	23.21	37.55
56	5.29	7.18	9.27	13.35	17.41	23.32	37.73
57	5.32	7.22	9.31	13.42	17.50	23.43	37.90
58	5.35	7.26	9.36	13.48	17.58	23.54	38.07
59	5.38	7.30	9.41	13.55	17.66	23.65	38.24
60	5.42	7.34	9.46	13.61	17.74	23.76	38.41
61	5.45	7.37	9.50	13.68	17.82	23.86	38.57
62	5.48	7.41	9.55	13.74	17.90	23.96	38.73
63	5.51	7.45	9.60	13.80	17.98	24.07	38.89
64	5.54	7.49	9.64	13.86	18.06	24.17	39.05
65	5.57	7.52	9.69	13.93	18.13	24.26	39.20
66	5.60	7.56	9.73	13.99	18.21	24.36	39.35
67	5.63	7.60	9.78	14.05	18.29	24.46	39.50
68	5.66	7.64	9.82	14.11	18.36	24.56	39.65
69	5.69	7.67	9.87	14.16	18.43	24.65	39.80
70	5.72	7.71	9.91	14.22	18.51	24.74	39.95

For non-machineable parcels add $1.75. Add $4.50 for each pickup stop.

RATE SCHEDULE 400(c)—PARCEL POST—DESTINATION BMC/ASF SERVICE

[Proposed Rates (Dollars)]

Postage rate units (pounds)	Rate			
	Zones			
	1 & 2	3	4	5
2	1.57	1.66	1.77	1.98
3	1.66	1.80	1.95	2.27
4	1.74	1.93	2.13	2.56
5	1.81	2.05	2.31	2.86
6	1.89	2.18	2.49	3.14
7	1.97	2.31	2.68	3.43
8	2.04	2.43	2.86	3.73
9	2.13	2.57	3.04	4.02
10	2.21	2.70	3.22	4.31
11	2.29	2.84	3.43	4.64
12	2.36	2.95	3.58	4.90
13	2.42	3.04	3.71	5.09
14	2.48	3.13	3.82	5.27
15	2.53	3.21	3.94	5.44
16	2.59	3.28	4.04	5.61
17	2.63	3.35	4.14	5.75
18	2.68	3.42	4.24	5.90
19	2.72	3.50	4.32	6.04
20	2.77	3.56	4.41	6.17
21	2.82	3.62	4.50	6.29
22	2.85	3.68	4.57	6.42
23	2.90	3.74	4.65	6.53
24	2.94	3.80	4.73	6.65
25	2.98	3.86	4.80	6.76
26	3.02	3.91	4.87	6.86
27	3.06	3.96	4.94	6.97
28	3.10	4.02	5.01	7.06
29	3.13	4.06	5.07	7.16
30	3.17	4.12	5.15	7.25
31	3.21	4.17	5.20	7.35
32	3.25	4.21	5.27	7.44
33	3.28	4.27	5.33	7.52
34	3.32	4.31	5.39	7.61
35	3.35	4.36	5.45	7.70
36	3.40	4.43	5.53	7.84
37	3.43	4.47	5.60	7.91
38	3.47	4.51	5.64	7.98
39	3.50	4.55	5.69	8.05
40	3.52	4.60	5.74	8.12
41	3.56	4.63	5.80	8.18
42	3.59	4.67	5.84	8.26
43	3.63	4.71	5.88	8.32
44	3.65	4.75	5.94	8.38
45	3.69	4.78	5.97	8.44
46	3.71	4.82	6.02	8.50
47	3.74	4.86	6.06	8.55
48	3.76	4.89	6.11	8.61
49	3.80	4.92	6.15	8.66
50	3.83	4.96	6.18	8.71
51	3.85	5.00	6.22	8.78
52	3.88	5.03	6.27	8.83
53	3.92	5.06	6.31	8.88
54	3.94	5.10	6.35	8.93
55	3.97	5.13	6.39	8.97
56	4.00	5.16	6.43	9.03
57	4.02	5.20	6.46	9.08
58	4.05	5.23	6.50	9.12
59	4.08	5.26	6.54	9.18
60	4.11	5.30	6.58	9.22
61	4.14	5.32	6.61	9.28
62	4.17	5.36	6.65	9.32
63	4.19	5.39	6.69	9.37
64	4.22	5.42	6.72	9.41
65	4.25	5.45	6.76	9.47
66	4.27	5.48	6.79	9.51
67	4.30	5.52	6.84	9.56
68	4.33	5.55	6.87	9.60
69	4.35	5.58	6.91	9.64
70	4.38	5.61	6.94	9.69

A proposed fee of $75 must be paid once every twelve month period.

RATE SCHEDULE 402—SPECIAL AND LIBRARY RATES

[Cents]

	Current	Proposed
Special:		
First Pound		
Not presorted	90	103
Presorted to 5-digits [1] [2]	65	57
Presorted to BMC [1] [3]	83	86
Each additional pound through 7 pounds	35	41
Each additional pound over 7 pounds	20	23
	Full (attributable cost) rate levels	
Library:		
First Pound	64	65
Each additional pound through 7 pounds	23	24
Each additional pound through 7 pounds	12	12

[1] Currently a fee of $60 must be paid once each 12-month period for each permit. The proposed fee is $75.
[2] For mailings of 500 or more pieces properly prepared and presorted to five-digit destination ZIP Codes.
[3] For mailings of 500 or more pieces properly prepared and presorted to Bulk Mail Centers.

RATE SCHEDULE 405—FOURTH-CLASS MAIL: SINGLE-PIECE BOUND PRINTED MATTER [1]

[Dollars]

Postage rate units (Pounds)	Rate							
	Zones							
	Local	1 & 2	3	4	5	6	7	8
Current								
1.5	0.67	0.92	0.96	1.04	1.16	1.28	1.43	1.56
2	0.69	0.96	1.02	1.12	1.28	1.44	1.64	1.81
2.5	0.71	0.99	1.07	1.20	1.39	1.60	1.85	2.06
3	0.73	1.03	1.12	1.27	1.51	1.76	2.06	2.31
3.5	0.75	1.07	1.17	1.35	1.63	1.91	2.26	2.56
4	0.77	1.10	1.22	1.43	1.74	2.07	2.47	2.81
4.5	0.79	1.14	1.27	1.50	1.86	2.23	2.68	3.06
5	0.81	1.18	1.33	1.58	1.98	2.39	2.89	3.31
6	0.85	1.25	1.43	1.73	2.21	2.70	3.30	3.80
7	0.89	1.32	1.53	1.89	2.44	3.02	3.72	4.30
8	0.93	1.39	1.63	2.04	2.67	3.33	4.13	4.80
9	0.97	1.47	1.74	2.20	2.91	3.65	4.55	5.30
10	1.01	1.54	1.84	2.35	3.14	3.96	4.96	5.80
Proposed								
1.5	0.86	1.21	1.25	1.32	1.43	1.54	1.68	1.80
2	0.88	1.24	1.29	1.39	1.53	1.69	1.87	2.03
2.5	0.89	1.28	1.34	1.46	1.64	1.84	2.07	2.26
3	0.91	1.31	1.39	1.53	1.75	1.98	2.26	2.49
3.5	0.92	1.35	1.44	1.60	1.86	2.13	2.45	2.72
4	0.94	1.38	1.49	1.68	1.97	2.28	2.64	2.96
4.5	0.95	1.42	1.54	1.75	2.08	2.42	2.84	3.19
5	0.97	1.45	1.59	1.82	2.19	2.57	3.03	3.42
6	0.99	1.52	1.68	1.96	2.40	2.86	3.42	3.88
7	1.02	1.59	1.78	2.11	2.62	3.16	3.80	4.35
8	1.05	1.66	1.88	2.25	2.84	3.45	4.19	4.81
9	1.08	1.73	1.97	2.40	3.05	3.75	4.57	5.28
10	1.11	1.80	2.07	2.54	3.27	4.04	4.96	5.74

[1] Includes both catalogs and similar bound printed matter.

RATE SCHEDULE 406—FOURTH-CLASS MAIL: BULK BOUND PRINTED MATTER [1]

[Dollars]

Zones	Current			Proposed		
	Per piece		Per pound	Per piece		Per pound
	Required	Carrier route [2]		Required	Carrier route [2]	
Local	0.32	0.27	0.028	0.410	0.355	0.015
1 & 2	0.43	0.38	0.058	0.550	0.495	0.050
3	0.43	0.38	0.087	0.550	0.495	0.078

RATE SCHEDULE 406—FOURTH-CLASS MAIL: BULK BOUND PRINTED MATTER [1]—Continued

[Dollars]

Zones	Current			Proposed		
	Per piece		Per pound	Per piece		Per pound
	Required	Carrier route [2]		Required	Carrier route [2]	
4	0.43	0.38	0.139	0.550	0.495	0.126
5	0.43	0.38	0.217	0.550	0.495	0.198
6	0.43	0.38	0.300	0.550	0.495	0.274
7	0.43	0.38	0.399	0.550	0.495	0.366
8	0.43	0.38	0.484	0.550	0.495	0.444

[1] Includes both catalogs and similar bound printed matter.
[2] Applies to mailings of at least 300 pieces presorted to carrier route as prescribed by the Postal Service.

Rate Schedules 500, 501, 502, and 503—Express Mail

Current rates are shown on schedules 500(a), 501(a), 502(a), and 503(a)

Proposed rates are shown on schedules 500(b), 501(b), 502(b), and 503(b)

RATE SCHEDULES 500, 501, 502, AND 503—EXPRESS MAIL RATES CURRENT

[Dollars]

Postage rate unit (pounds)	Schedule 500(a) same day airport service	Schedule 501(a) custom designed	Schedule 502(a) next day and second day PO to PO	Schedule 503(a) next day and second day PO to addressee
1/2	8.35	7.75	8.50	8.75
1	9.70	11.00	9.85	12.00
2	9.70	11.00	9.85	12.00
3	12.40	14.25	13.10	15.25
4	12.40	14.25	13.10	15.25
5	12.40	14.25	13.10	15.25
6	13.60	16.75	15.60	17.75
7	14.25	17.45	16.30	18.45
8	14.95	18.15	17.00	19.15
9	15.60	18.85	17.70	19.85
10	16.25	19.55	18.40	20.55
11	16.95	20.25	19.10	21.25
12	17.60	20.95	19.80	21.95
13	18.25	21.65	20.50	22.65
14	18.95	22.35	21.20	23.35
15	19.60	23.05	21.90	24.05
16	20.25	24.10	22.95	25.10
17	20.95	25.45	24.30	26.45
18	21.60	26.80	25.65	27.80
19	22.25	28.20	27.05	29.20
20	22.95	29.55	28.40	30.55
21	23.60	30.90	29.75	31.90
22	24.25	32.30	31.15	33.30
23	24.95	33.65	32.50	34.65
24	25.60	35.00	33.85	36.00
25	26.25	36.40	35.25	37.40
26	26.95	37.75	36.60	38.75
27	27.60	39.10	37.95	40.10
28	28.25	40.45	39.30	41.45
29	28.95	41.85	40.70	42.85
30	29.60	43.20	42.05	44.20
31	30.25	44.55	43.40	45.55
32	30.95	45.95	44.80	46.95
33	31.60	47.30	46.15	48.30
34	32.25	48.65	47.50	49.65
35	32.95	49.90	48.75	50.90
36	33.60	51.00	49.85	52.00
37	34.25	52.10	50.95	53.10
38	34.95	53.15	52.00	54.15
39	35.60	54.25	53.10	55.25
40	36.25	55.35	54.20	56.35
41	36.95	56.45	55.30	57.45
42	37.60	57.50	56.35	58.50
43	38.25	58.60	57.45	59.60
44	38.95	59.70	58.55	60.70
45	39.60	60.80	59.65	61.80
46	40.25	61.85	60.70	62.85
47	40.95	62.95	61.80	63.95

RATE SCHEDULES 500, 501, 502, AND 503—EXPRESS MAIL RATES CURRENT—Continued

[Dollars]

Postage rate unit (pounds)	Schedule 500(a) same day airport service	Schedule 501(a) custom designed	Schedule 502(a) next day and second day PO to PO	Schedule 503(a) next day and second day PO to addressee
48	41.60	64.05	62.90	65.05
49	42.25	65.15	64.00	66.15
50	42.95	66.20	65.05	67.20
51	43.60	67.30	66.15	68.30
52	44.25	68.40	67.25	69.40
53	44.95	69.55	68.40	70.55
54	45.60	70.55	69.40	71.55
55	46.30	71.65	70.50	72.65
56	46.95	72.80	71.65	73.80
57	47.60	73.90	72.75	74.90
58	48.30	74.90	73.75	75.90
59	48.95	76.05	74.90	77.05
60	49.60	77.15	76.00	78.15
61	50.30	78.25	77.10	79.25
62	50.95	79.35	78.20	80.35
63	51.60	80.40	79.25	81.40
64	52.30	81.50	80.35	82.50
65	52.95	82.60	81.45	83.60
66	53.60	83.70	82.55	84.30
67	54.30	84.75	83.60	85.75
68	54.95	85.85	84.70	86.85
69	55.60	86.95	85.80	87.95
70	56.30	88.05	86.90	89.05

Add: $4.00 for each pickup stop.
Add: $4.00 for each Custom Designed delivery stop.

RATE SCHEDULES 500, 501, 502, AND 503 EXPRESS MAIL RATES [1] [2] [3]—PROPOSED

[Dollars]

Weight not exceeding (pounds)	Schedule 500 (b) same day airport service	Schedule 501 (b) custom designed	Schedule 502 (b) next day and second day PO to PO	Schedule 503 (b) next day and second day PO to addressee
1/2	9.35	8.75	9.50	9.75
1	10.85	12.75	11.05	13.75
2	10.85	12.75	11.05	13.75
3	12.40	14.60	12.80	15.60
4	13.50	15.70	13.90	16.70
5	14.60	16.85	15.05	17.85
6	15.65	18.00	16.20	19.00
7	16.75	19.15	17.35	20.15
8	17.80	20.30	18.50	21.30
9	18.90	21.45	19.65	22.45
10	20.00	22.60	20.80	23.60
11	21.05	23.75	21.95	24.75
12	22.15	24.90	23.10	25.90
13	23.25	26.05	24.25	27.05
14	24.30	27.20	25.40	28.20
15	25.40	28.35	26.55	29.35
16	26.35	29.50	27.70	30.50
17	27.25	30.65	28.85	31.65
18	28.10	31.80	30.00	32.80
19	28.95	32.95	31.15	33.95
20	29.85	34.10	32.30	35.10
21	30.70	35.25	33.45	36.25
22	31.55	36.40	34.60	37.40
23	32.45	37.55	35.75	38.55
24	33.30	38.70	36.90	39.70
25	34.15	39.85	38.05	40.85
26	35.05	41.00	39.20	42.00
27	35.90	42.15	40.35	43.15
28	36.75	43.30	41.50	44.30
29	37.65	44.45	42.65	45.45
30	38.50	45.60	43.80	46.60
31	39.35	46.75	44.95	47.75
32	40.25	48.00	46.20	49.00
33	41.10	49.40	47.60	50.40
34	41.95	50.90	49.10	51.90
35	42.85	52.30	50.50	53.30
36	43.70	53.70	51.90	54.70
37	44.55	55.20	53.40	56.20
38	45.45	56.60	54.80	57 60

RATE SCHEDULES 500, 501, 502, AND 503 EXPRESS MAIL RATES [1] [2] [3]—PROPOSED—Continued

[Dollars]

Weight not exceeding (pounds)	Schedule 500 (b) same day airport service	Schedule 501 (b) custom designed	Schedule 502 (b) next day and second day PO to PO	Schedule 503 (b) next day and second day PO to addressee
39	46.30	58.00	56.20	59.00
40	47.15	59.40	57.60	60.40
41	48.05	60.90	59.10	61.90
42	48.90	62.30	60.50	63.30
43	49.75	63.70	61.90	64.70
44	50.65	65.20	63.40	66.20
45	51.50	66.60	64.80	67.60
46	52.35	68.00	66.20	69.00
47	53.25	69.50	67.70	70.50
48	54.10	70.90	69.10	71.90
49	54.95	72.30	70.50	73.30
50	55.85	73.70	71.90	74.70
51	56.70	75.20	73.40	76.20
52	57.55	76.60	74.80	77.60
53	58.45	78.00	76.20	79.00
54	59.30	79.50	77.70	80.50
55	60.20	80.90	79.10	81.90
56	61.05	82.30	80.50	83.30
57	61.90	83.80	82.00	84.80
58	62.80	85.20	83.40	86.20
59	63.65	86.60	84.80	87.60
60	64.50	88.00	86.20	89.00
61	65.40	89.50	87.70	90.50
62	66.25	90.90	89.10	91.90
63	67.10	92.30	90.50	93.30
64	68.00	93.80	92.00	94.80
65	68.85	95.20	93.40	96.20
66	69.70	96.60	94.80	97.60
67	70.60	98.10	96.30	99.10
68	71.45	99.50	97.70	100.50
69	72.30	100.90	99.10	101.90
70	73.20	102.30	100.50	103.30

[1] $4.50 for each pickup stop. $4.50 for each Custom Designed delivery stop.
[2] The applicable 2-pound rate is charged for matter sent in a flat rate envelope provided by the Postal Service.
[3] Corporate account customers shall receive a discount as follows: a) If revenue derived from pieces sent at the 8 oz. rate is greater than $5,000 for the period, as 12 percent discount applies to the revenue derived from pieces not sent at the 8 oz. rate. b) If revenue derived from pieces sent at the 8 oz. rate is less than $5,000 for the period, then the difference between $5,000 and the revenue derived from pieces sent at the 8 oz. rate shall be subtracted from the revenue from pieces not sent at the 8 oz. rate, and the remaining revenue from pieces not sent at the 8 oz. rate shall receive a 12 percent discount.

SCHEDULE SS-1.—SPECIAL SERVICES: ADDRESS CORRECTION

Description	Fee	
	Current	Proposed
Per piece	$0.30	$0.30

SCHEDULE SS-2.—SPECIAL SERVICES: BUSINESS REPLY MAIL

Description	Fees (in addition to postage)	
	Current	Proposed
Business reply [1]:		
With advance deposit account:		
Regular	.08	.09
Discount	.05	.03
Without advance deposit account	.40	.40
Annual License and Accounting Fees:		
With Advance Deposit Account	260.00	
Permit Fee		75.00
Accounting Fee		185.00

SCHEDULE SS-2.—SPECIAL SERVICES: BUSINESS REPLY MAIL—Continued

Description	Fees (in addition to postage)	
	Current	Proposed
Without Advance Deposit Account	60.00	75.00

[1] Rates are applied on a per-piece basis in addition to regular First-Class postage. Currently, a fee of $260 must be paid each year for each advance deposit permit and account. A fee of $60 must be paid each year for each non-advance deposit account. The proposed charge for each non-advance account permit is $75. For advance accounts, it is proposed that the combined permit and accounting fee be split into two separate charges of $75 and $185 for the permit and accounting fee, respectively.

SCHEDULE SS-4.—SPECIAL SERVICES: CERTIFICATES OF MAILING

Description	Fees (in addition to postage)	
	Current	Postage
Individual pieces:		
Original certificate of mailing for listed pieces of all classes or ordinary mail (per piece)	$0.45	$0.50

SCHEDULE SS-4.—SPECIAL SERVICES: CERTIFICATES OF MAILING—Continued

Description	Fees (in addition to postage)	
	Current	Postage
Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece)	0.15	0.20
Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified and C.O.D. mail (each copy)	0.45	0.50
Bulk pieces:		
Identical pieces of first- and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees:		
Up to 1,000 pieces (1 certificate for total number)	2.00	2.50
Each additional 1,000 pieces or fraction	0.25	0.30

SCHEDULE SS-4.—SPECIAL SERVICES: CERTIFICATES OF MAILING—Continued

Description	Fees (in addition to postage)	
	Current	Postage
Duplicate copy	0.45	0.50

SCHEDULE SS-5.—SPECIAL SERVICES: CERTIFIED MAIL

Description	Fee (in addition to postage)	
	Current	Proposed
Per piece	$0.85	$0.90

SCHEDULE SS-6.—SPECIAL SERVICES: COLLECT ON DELIVERY

Amount to be collected or insurance coverage desired	Fees (in addition to postage)	
	Current	Proposed
$0.01 to $25	$2.00	$2.50
25.01 to 50	2.50	2.50

SCHEDULE SS-6.—SPECIAL SERVICES: COLLECT ON DELIVERY—Continued

Amount to be collected or insurance coverage desired	Fees (in addition to postage)	
	Current	Proposed
50.01 to 100	3.00	3.25
100.01 to 200	3.40	4.00
200.01 to 300	4.25	4.75
300.01 to 400	5.25	5.50
400.01 to 500	6.50	6.50
500.01 to 600		7.00
Notice of nondelivery of C.O.D.	1.75	2.10
Alteration of C.O.D. charges or designation of new addressee	1.75	2.10
Registered C.O.D	2.00	2.50

SCHEDULE SS-8.—SPECIAL SERVICES: MONEY ORDERS

Amount	Fees (domestic)	
	Current	Proposed
$0.01 to $35	$0.75	$0.75
35.01 to 700	1.00	.75
APO-FPO		
$0.01 to $700	.25	.25

SCHEDULE SS-8.—SPECIAL SERVICES: MONEY ORDERS—Continued

Amount	Fees (domestic)	
	Current	Proposed
Inquiry fee, which includes the issuance of copy of a paid money order	2.00	2.50

SCHEDULE SS-9.—SPECIAL SERVICES: INSURED MAIL

Liability	Fees (domestic) (in addition to postage)	
	Current	Proposed
$0.01 to $50	$0.70	$0.75
50.01 to 100	1.50	1.60
100.01 to 150	1.90	2.40 [1]
150.01 to 200	2.20	2.40 [1]
200.01 to 300	3.15	3.50
300.01 to 400	4.30	4.60
400.01 to 500	5.00	5.40
500.01 to 600		6.00

[1] Propose that value levels $100.01 to $150 and $150.01 to $200 be combined into one level.

SCHEDULE SS-10—SPECIAL SERVICES: BOX/CALLER SERVICE

Box size	Fee per semi-annual period				
	Cubic inch capacity of boxes				
	Less than 296	296 to	500 to over	1,000 to	2,000 and
	1	2	3	4	5
A. Rental Rates for Post Office Boxes:					
Group IA					
Current	$14.00	$19.50	$36.00	$60.00	$100.00
Proposed	25.00	33.00	58.00	96.00	160.00
Group IB					
Current	14.00	19.50	36.00	60.00	100.00
Proposed	22.00	28.50	50.00	84.00	140.00
Group IC					
Current	14.00	19.50	36.00	60.00	100.00
Proposed	19.00	25.00	45.00	72.00	120.00
Group II					
Current	3.25	5.00	8.50	14.00	22.00
Proposed	4.00	6.00	11.00	17.00	26.00
Group III [1]					
Current	1.00	1.00	1.00	1.00	1.00
Proposed	1.20	1.20	1.20	1.20	1.20

[1] Payment on annual basis.

Description	Fees	
	Current	Proposed
B. Caller Service:		
For Caller Service (Semi-Annual)		
Group IA	$170.00	$225.00
Group IB	170.00	215.00
Group IC	170.00	200.00
For Each Reserved Call Number (Annual)	20.00	25.00

SCHEDULE SS-11a—SPECIAL SERVICES: ZIP CODING OF MAILING LISTS

Description	Fee	
	Current	Proposed
Per 1,000 addresses	$42.00	$54.00

SCHEDULE SS-11b—SPECIAL SERVICES: CORRECTION OF MAILING LIST

Description	Fee	
	Current	Proposed
Per submitted address	$0.15	$0.15
Minimum charge per list corrected	1.00	5.00

SCHEDULE SS-11c—ADDRESS CHANGES FOR ELECTION BOARDS AND REGISTRATION COMMISSIONS

Description	Fee	
	Current	Proposed
Per change of address	$0.15	$0.15

SCHEDULE SS-11d—MAILING LIST SERVICES

	Fee	
	Current (cents)	Proposed (cents)
Corrections Associated with Arrangement of Address Cards in Sequence of Carrier Delivery: Per Correction	15	15
When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved.		

SCHEDULE SS-12—SPECIAL SERVICES: METER SETTING ON SITE

Description	Fees	
	Current	Proposed
On-Site Meter Settings:		
First meter:		
By appointment	25.00	25.00
Unscheduled request	28.00	28.00
Additional meters (each)	4.00	2.75
Checking Meter In or Out Of Service:		
Per Meter	5.00	6.50

SCHEDULE SS-13—SPECIAL SERVICES: PARCEL AIR LIFT

Description	Fees (in addition to postage)	
	Current	Proposed
Up to 2 pounds	$0.30	$0.35
Over 2 but not exceeding 3 pounds	0.60	0.70
Over 3 but not exceeding 4 pounds	0.90	1.05
Over 4 pounds	1.20	1.40

SCHEDULE SS-14(a)—SPECIAL SERVICES: REGISTERED MAIL

Value (dollars)	Current (fees in addition to postage)	
	For articles covered by insurance—Fees (dollars)	For articles not covered by insurance—Fees (dollars)
0.00 to 100	4.50	4.40
100.01 to 500	4.85	4.70
500.01 to 1,000	5.25	5.05
1,000.01 to 2,000	5.65	5.35
2,000.01 to 3,000	6.05	5.70
3,000.01 to 4,000	6.45	6.00
4,000.01 to 5,000	6.85	6.35
5,000.01 to 6,000	7.25	6.65
6,000.01 to 7,000	7.65	7.00
7,000.01 to 8,000	8.10	7.30
8,000.01 to 9,000	8.55	7.65
9,000.01 to 10,000	9.00	7.95
10,000.01 to 11,000	9.50	8.30
11,000.01 to 12,000	9.95	8.60
12,000.01 to 13,000	10.45	8.95
13,000.01 to 14,000	10.90	9.25
14,000.01 to 15,000	11.40	9.60
15,000.01 to 16,000	11.85	9.90
16,000.01 to 17,000	12.35	10.25
17,000.01 to 18,000	12.85	10.55
18,000.01 to 19,000	13.25	10.90
19,000.01 to 20,000	13.75	11.20
20,000.01 to 21,000	14.25	11.55
21,000.01 to 22,000	14.75	11.85
22,000.01 to 23,000	15.25	12.20
23,000.01 to 24,000	15.75	12.30
24,000.01 to 25,000	16.25	12.65
25,000.01 to 1,000,000	[1] 16.25	[1] 12.65
1,000,000.01 to 15,000,000	[2] 260.00	[2] 256.40
over 15,000,000	[3]	[3]

[1] Plus handling charge of 35 cents per $1,000 or fraction over first $25,000.
[2] Plus handling charge of 25 cents per $1,000 or fraction over first $1,000,000.
[3] Additional charges may be made based on considerations of weight, space and value.

SCHEDULE SS-14(b)—SPECIAL SERVICES: REGISTERED MAIL

Value (dollars)	Proposed (fees in addition to postage)	
	For articles covered by insurance	For articles not covered by insurance
	Fees (dollars)	Fees (dollars)
0.00 to 100	4.50	4.40.
100.01 to 500	4.85	4.70.
500.01 to 1,000	5.25	5.05.
1,000.01 to 2,000	5.65	5.35.
2,000.01 to 3,000	6.05	5.70.
3,000.01 to 4,000	6.45	6.00.
4,000.01 to 5,000	6.85	6.35.
5,000.01 to 6,000	7.25	6.65.
6,000.01 to 7,000	7.65	7.00.
7,000.01 to 8,000	8.10	7.30.
8,000.01 to 9,000	8.55	7.65.
9,000.01 to 10,000	9.00	7.95.
10,000.01 to 11,000	9.50	8.30.
11,000.01 to 12,000	9.95	8.60.
12,000.01 to 13,000	10.45	8.95.
13,000.01 to 14,000	10.90	9.25.
14,000.01 to 15,000	11.40	9.60.
15,000.01 to 16,000	11.85	9.90.
16,000.01 to 17,000	12.35	10.25.
17,000.01 to 18,000	12.85	10.55.
18,000.01 to 19,000	13.25	10.90.
19,000.01 to 20,000	13.75	11.20.
20,000.01 to 21,000	14.25	11.55.
21,000.01 to 22,000	14.75	11.85.
22,000.01 to 23,000	15.25	12.20.
23,000.01 to 24,000	15.75	12.30.
24,000.01 to 25,000	16.25	12.65.
25,000.01 to 1,000,000	[1] 16.25	[1] 12.65.

SCHEDULE SS-14(b)—SPECIAL SERVICES: REGISTERED MAIL—Continued

Value (dollars)	Proposed (fees in addition to postage)	
	For articles covered by insurance	For articles not covered by insurance
	Fees (dollars)	Fees (dollars)
1,000,000 to 15,000,000	[2] 260.00	[2] 256.40.
over $15,000,000	([3])	([3])

[1] Plus handling charge of 35 cents per $1,000 or fraction over first $25,000.
[2] Plus handling charge of 25 cents per $1,000 or fraction over first $1,000,000.
[3] Additional charges may be made based on considerations of weight, space and value.

SCHEDULE SS-15—SPECIAL SERVICES: RESTRICTED DELIVERY

Description	Fee ($) (in addition to postage)	
	Current	Proposed
Per piece	2.00	2.50

SCHEDULE SS-16—SPECIAL SERVICES: RETURN RECEIPTS

Description	Fees ($) (in addition to postage)	
	Current	Proposed
Requested at time of mailing:		
Showing to whom (signature) and date delivered	0.90	1.00
Without another special service-merchandise only	1.00	1.10
Showing to whom (signature) and date and address where delivered	1.20	1.35

SCHEDULE SS-16—SPECIAL SERVICES: RETURN RECEIPTS—Continued

Description	Fees ($) (in addition to postage)	
	Current	Proposed
Without another special service-merchandise only	1.35	1.50
Requested after mailing:		
Showing to whom and date delivered	5.00	6.00

SCHEDULE SS-17—SPECIAL SERVICES: SPECIAL DELIVERY

Class/Weight	Fees ($) (in addition to postage)	
	Current	Proposed
First-Class and Priority Mail:		
Not more than 2 pounds	5.35	5.60
More than 2 pounds but not more than 10 pounds	5.75	6.00
More than 10 pounds	7.25	7.50

SCHEDULE SS-17—SPECIAL SERVICES: SPECIAL DELIVERY—Continued

Class/Weight	Fees ($) (in addition to postage)	
	Current	Proposed
All Other Classes:		
Not more than 2 pounds	5.65	5.90
More than 2 pounds but not more than 10 pounds	6.10	6.75
More than 10 pounds	8.10	8.35

SCHEDULE SS-18—SPECIAL SERVICES: SPECIAL HANDLING

Class/Weight	Fees ($) (in addition to postage)	
	Current	Proposed
Not more than 10 pounds	1.55	1.80
More than 10 pounds	2.25	2.50

SCHEDULE SS-19—Special Services: Stamped Envelopes

Type	Fees (in addition to postage)	
	Current	Proposed
Single sale	$0.05	$0.05
Bulk (500) #6-3/4 size		
Regular	6.40	7.40
Window	7.00	8.00
Bulk (500) #10 size [1]		
Regular	8.40	11.00
Window	9.00	12.00
Multi-color printing (500)		
#6-3/4 size	8.00	9.00
#10 size [1]	11.00	12.00
Printing charge per 500 envelopes [2]		
Minimum order (500 envelopes)	3.50	4.00
Order for 1,000 or more Envelopes	3.50	4.00
Double window (500 #10 size [1]	12.00	13.50
Household (50) #6-3/4 size		
Regular	2.50	2.70
Window	2.60	2.80
Household (50) #10 size [1]		
Regular	2.70	2.90
Window	2.80	3.00

[1] Fee for precancelled envelopes is the same.
[2] Printing charge for each type of printed envelope.

SCHEDULE SS-20—SPECIAL SERVICES: MERCHANDISE RETURN

Description	Fee (in addition to postage)	
	Current	Proposed
Per transaction Shipper must have an advance deposit account.	$0.20	$0.25

SCHEDULE 1000—FEES

Description	Fee (one time only	
	Current	Proposed
First-class presorted mailing fee	$60.00	$75.00
Second class re-entry fee	40.00	45.00
Second class mailing fee		
A. Original entry	265.00	275.00
B. Additional entry (all zones)	70.00	75.00
Second-class registration for news agents	40.00	45.00
Third-class bulk mailing fee	60.00	75.00
Fourth-class special mail presorted mailing fee	60.00	75.00
Authorization to use permit imprint	60.00	75.00
Merchandise return (per facility receiving merchandise return labels)	60.00	75.00

Attachment B—Proposed Hearing Schedule for Proceedings

Postal Rate and Fee Changes

[Docket No. R90-1]

April 12, 1990—Prehearing Conference
May 11, 1990—Complete discovery concerning direct case of the Postal Service. Identify expected amount of oral cross-examination.
June 5, 1990—Beginning of hearings, *i.e.*, cross-examination of the Postal Service's case-in-chief. (9:30 a.m. in the Commission hearing room.)
July 16, 1990—Filing of the case-in-chief of each participant, including rebuttal to Postal Service.
August 10, 1990—Complete discovery directed to intervenors and OCA. Identify expected amount of oral cross-examination.
September 5, 1990—Beginning of evidentiary hearings as to the case-in-chief of intervenors and OCA. (9:30 a.m. in the Commission hearing room.)
September 10, 1990—Completion of all discovery directed to the Postal Service.
October 1, 1990—Filing of evidence in rebuttal to direct cases of participants other than Postal Service. (No discovery to be permitted on this rebuttal evidence; only oral cross-examination.
October 9, 1990—Beginning of hearings on rebuttal to participant direct evidence. (9:30 a.m. in the Commission hearing room.)
October 29, 1990—Initial briefs filed.
November 8, 1990—Reply briefs filed.
November 4, 1990—Oral Argument.

[FR Doc. 90-5879, Filed 3-14-90; 8:45 am]

BILLING CODE 7710-FW-M

Visit to Postal Facility

March 9, 1990.

Notice is hereby given that several members of the Postal Rate Commission will tour the Washington, DC Post Office, General Mail Facility, 900 Brentwood Road, NE., Washington, DC., on Thursday, March 15, 1990 at 6 p.m.

For further information contact Cyril Pittack at (202) 789-6840. A report of the visit will be on file in the Commission's Docket Room.

Charles L. Clapp,

Secretary.

[FR Doc. 90-5930 Filed 3-14-90; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27790; File No. SR-CBOE-89-30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Eligibility Requirements for RAES in SPX/NSX Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 8, 1990 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes that the eligibility requirements for market makers participating in the CBOE's Retail Automatic Execution System ("RAES") in Standard & Poor's 500 ("S&P 500") Index options ("SPX" or "NSX"),[2] that have been previously approved by the Commission on a pilot basis, be extended and made permanent.[3] Additionally, the Exchange proposes to incorporate these eligibility requirements, along with some minor revisions and clarifications, into the CBOE's rules as a new Rule 24.16. Finally, the CBOE requests partial accelerated approval of that portion of its proposal that extends the existing pilot program as modified by this filing.

[1] The CBOE originally filed the proposal as a filing under section 19(b)(3) of the Act. Subsequently the CBOE amended the filing to seek approval under Section 19(b)(2) of the Act. *See* letter from Robert P. Ackermann, Vice President Legal Services, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, Commission, dated January 22, 1990.

[2] SPX options are settled based on the closing prices of the securities comprising the S&P 500 Index on Expiration Friday. NSX options are settled based on the opening prices of the securities comprising the S&P 500 Index on Expiration Friday.

[3] The Commission approved the CBOE's proposed RAES eligibility requirements for SPX options on a pilot basis in December 1988. *See* Securities Exchange Act Release No. 26373 (December 20, 1988), 53 FR 52542 (order approving File No. SR-CBOE-88-02).

The Exchange proposes the following new Rule 24.16. (Additions are in italics; deletions are bracketed.)

[The following describes amended eligibility criteria for nonmembers to participate as contra-brokers on RAES in the Standard & Poor's 500 Index ("SPX") for a six-month pilot program (as more fully described in SR–CBOE–86–14:]

Rule 24.16 RAES Eligibility in SPX/*NSX*

(a) [1.] Any Exchange member who has registered as a market-maker is eligible to log onto RAES in SPX/*NSX*, so long as the following requirements are met[.]:

(i) [2.] The market-maker must log onto the system using his own acronym and individual password. All RAES trades to which the market-maker is a party will be assigned to and will clear into his designated account.

(ii) [3.] The market-maker may designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant. Unless exempted by the Market Performance Committee, only one participant in a joint account may use the joint account for trading *on RAES* in a particular option class. [at one time, either on RAES or in regular trading.]

(iii) [4.] Unless exempted by the Market Performance Committee, a market-maker may log onto RAES in SPX/*NSX* only in person and may continue on the system only so long as he is present in that trading crowd. Accordingly, absent exemption from the foregoing limitation, a member may not remain on the RAES system and must log off of the system when he has left the trading crowd, unless the departure is for a brief interval.

(b) [5.] Unless exempted by the Market Performance Committee, any market-maker who has logged on RAES at any time during an expiration month must log on the RAES system in SPX/*NSX* whenever he is present in that trading crowd until the next expiration.

(c) [6.] Notwithstanding the limitations in paragraph [4] *(a)(iii)* above, if there [is] *appears to be* inadequate RAES participation in SPX/*NSX*, the Exchange's Market Performance Committee ("MPC") may require market makers who are members of the trading crowd, as defined in [Interpretation .01 to Rule 8.12.] *Rule 8.50* to log on [to] RAES absent reasonable justification or excuse for non-participation. *If there continues to be inadequate RAES participation, the MPC may allow market-makers in other classes of options to log on RAES in SPX/NSX.*

(d) [7.] [Failure of a member] *Members who fail* to abide by *the foregoing* [these eligibility] requirements, may be subject to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the Market Performance Committee, including but not limited to suspending a member's eligibility for participation on RAES and such other remedies as may be appropriate and allowed under Chapter VIII of the Exchange Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes that the market maker eligibility requirements for market makers to participate on RAES for SPX/NSX options be approved on a permanent basis. Additionally, the CBOE proposes to incorporate these market maker eligibility requirements into the Exchange's rules. The Exchange also proposes that the pilot program governing market maker eligibility requirements, as modified by this filing, be extended.

The Exchange believes that the proposed Rule 24.16 does not include any substantive changes from the existing market maker eligibility requirements to participate on RAES for options on the S&P 500 that previously have been approved by the Commission on a pilot basis. The CBOE proposal does include some clarifications, such as nothing that the market maker eligibility requirements to participate on RAES in SPX options are also applicable to NSX options. Additionally, the CBOE proposal provides that if there is inadequate participation on RAES in SPX/NSX, the MPC may allow market makers in other classes of options to log on SPX/NXS RAES.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 6(b)(5) of the Act, which provides, among other things, that the rules of the Exchange are to be designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has requested that the portion of its proposal that extends the existing pilot program as modified by this filing be given accelerated approval. The Commission finds that this portion of the proposed rule change is consistent with the requirements of the Act and the Commission believes, as it noted when approving the pilot program, that the eligibility requirements are a positive step in strengthening the integrity of the RAES system for SPX/NSX options. The Commission finds good cause for extending the pilot program prior to the thirtieth day of publication of notice of filing in the **Federal Register** because the pilot program has operated effectively since its implementation and the Commission has not received any negative comments regarding the pilot program since its inception. Finally, the Commission's approval is limited until December 31, 1990.[4]

With respect to the CBOE's proposal for permanent approval of the market maker eligibility standards within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

[4] With respect to the two modifications: the inclusion of NSX merely codifies the fact that SPX eligibility for RAES includes NSX; and the addition of the clause relating to inadequate RAES participation on SPX extends to RAES for SPX the same procedures to ensure adequate market maker participation as are applicable to RAES for all other CBOE options.

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1990

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, [5] that the proposed rule change (SR–CBOE–30) be, and hereby is, approved, solely as it relates to the extension of the existing eligibility requirements as modified by this filing on a pilot basis until December 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: March 9, 1990.

Jonathan G. Katz,

Secretary.

Release No. 34–27776; SR–DGOC–90–02

Self-Regulatory Organizations; Proposed Rule Change by Delta Government Options Corporation Relating to Procedures for Narrowing Strike Prices of Certain Securities

March 7, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1990 Delta Government Options Corporation ("DGOC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DGOC is filing herewith a proposed rule change relating to procedure for Exercise Prices.

"*Exercise Price*" means (a) in the case of an Option Contract on Treasury Bonds or Treasury Notes, the price (stated in whole numbers [for an Option Contract on a Treasury bond, whole numbers for an Option Contract on a Treasury Note with a maturity of more than seven years, and whole numbers] and halves for an Option Contract on a *Treasury Bond or* Treasury Note with a *remaining term to maturity of three years or more*) [maturity of seven years or less] at which the Treasury Bonds or Notes may be purchased or sold by the Holder, stated as a specified percentage of the Unit of Trading or (b) in the case of an Option Contract on Treasury Bills *or Treasury Notes with a remaining term to maturity of less than three years,* the price (stated in whole numbers and *quarters* [halves]) at which the Treasury Bills *or Notes* may be purchased or sold by the Holder, stated in percentage terms as a specified complement of an annualized discount from the principal amount of the Treasury Bills (that is, the difference between 100 percent and an annualized discount stated as a percentage).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to afford to Participants options contracts on the same underlying security with an increased number of exercise prices.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DGOC since the proposed rule change will increase the utilization of options in the System and have no impact on unexpired option contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DGOC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Not applicable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR–DGOC–90–2 and should be submitted by April 5, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–5996 Filed 3–14–90; 8:45 am]

BILLING CODE 8010–01–M

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[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1989).

[Release No. 34-27787; File No. SR-PSE-90-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Stock Exchange, Inc. Relating to the Reorganization and Renumbering of the Exchange Rules of the Board of Governors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 8, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self/regulatory organization. Amendment No. 1, submitted on March 2, 1990, proposes several minor changes to SR-PSE-90-06.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to reorganize and renumber the Rules of the Board of Governors. The proposed restructuring of the PSE Rules will regroup the Rules by subject matter, with a new numbering system. The 22 existing Rules will be restructured into 15 Rules, and new subsections will be added. In addition, the current designation of the Rules by roman numerals will be replaced by the arabic numbering system. For example, section numbers in each Rule will be replaced by the following designation—Rule 1.1, Rule 1.2, Rule 1.3, etc.[2] Set out below is an index to the reorganization.

	Proposed new rule	Existing rule
Rule 1	Membership	Rules I, Sec. 4; VIII and IX.
Rule 2	Capital Requirements.	Rules V; VII, XI and VI, Sec. 16.
Rule 3	Listing Requirements.	Rules I, Sec. 3; VI, Sec 12, 13.
Rule 4	General Trading Rules.	Definitions, Rules I, Sec. 1, 2; III, Sec. 1-8; XIX, Sec. 1-3.
Rule 5	Equities Trading	Rules I, Sec. 5-24; IV, Sec. 1-3; XIII, XIV, XV, and XVIII.
Rule 6	Options Trading	Rule VI.
Rule 7	Index Options	Rule XXI.
Rule 8	[Reserved]	
Rule 9	Conduct of Accounts, Advertising and Sales Literature.	Rules X, VI, Sec. 14, 15, 35, 83; and XVI.
Rule 10	Disciplinary Proceedings and Appeals.	Rules XX, VI, Sec. 84.
Rule 11	Committees	Rule XXII.
Rule 12	Arbitration	Rule XII.
Rule 13	Liability of Governors.	Rule XXIII.

The entire text of the proposal is available for inspection and copying at the Commission's Public Reference Section and at the Exchange.

II. Self-Regulatory Organizaton's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to renumber and reorganize the Exchange's Rules of the Board of Governors. Exchange staff has been examining the PSE's Rules with a view to reorganizing them in a more comprehensible structure. As the Rules are currently written, rules pertaining to one subject may be scattered among several rules. This disorganization complicates reference to the Rules for both Exchange members and Exchange staff. The proposed structure regroups the Rules by subject matter, with a new numbering system.

The reorganization is designed to create a logical order and to facilitate reference to the Rules by Exchange members, staff, and other interested parties. It has developed as a result of many meetings between Exchange staff from the Regulations, Surveillance, Corporate Affairs, Listings and Member Services Departments, and the Office of General Counsel, and has been approved by those departments.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competiton that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change and Amendent No. 1 are concerned solely with the administration of the Exchange, they have become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such rule change and Amendment No. 1, the Commission may summarily abrogate such rule change and Amendment No. 1 if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5

[1] Amendment No. 1 proposes the following changes:

1. Transfer Rule 13, *Special Offerings* (currently Rule XIV) to Rule 5, *Equities Trading*, so that "Special Offerings" is a subsection of Rule 5;

2. Transfer Rule 14, *Closing Contracts* (currently Rule XVII) to Rule 5, *Equities Trading*, so that "Closing Contracts" is a subsection of Rule 5;

3. Reverse Rule 9 and 10 so that Rule 9 will become *Conduct of Accounts, Advertising and Sales Literature*, and Rule 10 will become *Disciplinary Proceedings and Appeals*, and;

4. Rule 15, *Liability of Governors* will become Rule 13, *Liability of Governors*, due to the transfer of Rules 13 and 14 to Rule 5.

[2] The PSE's new numbering system is based on the numbering system of the Rules of the Chicago Board Options Exchange.

U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–90–06 and should be submitted by April 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 8, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–5997 Filed 3–14–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 190–015]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on April 18, 1990, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of Navy Homeport.
4. Update of dredging operations in New York harbor.
5. Report on kayak launchings established by New York City.
6. Topics from the flooor.
7. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander L. Brooks, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Port Safety Office, Building 109, Governors Island, New York, NY 10004; or by calling (202) 668–7834.

Dated: March 2, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 90–5901 Filed 3–14–90; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

[Docket S–862]

Brookville Shopping, Inc. et al.; Application for a Section 804 Waiver To Operate Up to Six Foreign-Flag Vessels

Brookville Shipping, Inc. (Brookville), Liberty Maritime Corporation (Liberty) and Philip J. Shapiro (Applicants), by letter of February 26, 1990, requested a waiver of section 804(a) of the Merchant Marine Act, 1936 (Act). The Applicants seek on their behalf, and on behalf of any subsidiaries, associates or affiliates, blanket permission to charter, own, act as agent or broker for or to have an interest in up to six dry, liquid or combination bulk foreign-flag vessels each not in excess of 150,000 deadweight tons.

Brookville, wholly owned by Mr. Shapiro, is the holder of operating-differential subsidy agreements (ODSAs) MA/MSB–166(a) and MA/MSB–272. Brookville's ODSAs were recently amended to provide for subsidy sharing among several vessels owned by Liberty Shipping Group, L.P., which is not affiliated with the Applicants within the meaning of section 804. Liberty, also wholly owned by Mr. Shapiro, is the operator of those U.S.-flag vessels. The Applicants request that the permission they seek here in be granted for the remainding period of the ODSAs MA/MSB–166(a) and MA/MSB–272, which is October 9, 1994 and April 13, 1996, respectively.

The Applicants note that the Maritime Administrator has already approved similar applications, and has found U.S.-flag operators cannot compete in the worldwide carriage of dry and liquid bulk commodities and that no suitable U.S.-flag vessels are available to provide service in the dry and liquid bulk foreign trade. Therefore, the Applicants aver, their entry into the world bulk market as an operator of foreign-flag vessels will not adversely affect other U.S.-flag operators. In addition, the Applicants emphasize that the granting of the waiver will result in more efficient operation of their U.S.-flag vessels and improved financial performance.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on March 28, 1990.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: March 9, 1990.

James E. Saari,

Secretary.

[FR Doc. 90–5888 Filed 3–14–90; 8:45 am]

BILLING CODE 9140–81–M

National Highway Traffic Safety Administration

Rulemaking, Research, and Enforcement Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on April 26, 1990, beginning at 10:15 a.m. Questions relating to the agency's rulemaking,

research and enforcement programs, must be submitted in writing by April 17, 1990. If sufficient time is available questions received after April 17 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by April 17, 1990, and the issues to be discussed will be mailed to interested persons by April 20, 1990, and will also be available at the meeting.

ADDRESSES: Questions for the April 26, meeting relating to the agency's rulemaking, research and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, room 5401, 400 7th Street, SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on April 26, 1990. The meeting will begin at 10:15 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative, or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Issued On: March 11, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-5975 Filed 3-14-90; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Office of Hazardous Materials Transportation Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 30, 1990.

ADDRESS COMMENTS TO: Docket Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Aplicant	Renewal of exemption
2462-X	E. du Pont de Nemours & Co., Wilmington, DE	2462
3216-X	Atochem North America, Inc., Philadelphia, PA	3216
5704-X	Trojan Corp., Spanish Fork, UT	5704
5704-X	Atlas Powder Co., Dallas, TX	5704
6154-X	Uniroyal Chemical Co. Inc., Middlebury, CT	6154
6309-X	Insta-Foam Products, Inc., Joliet, IL	6309
6543-X	Linde Gases of Florida, Inc., Tampa, FL	6543
6543-X	Airco, of the BOC Group, Inc.,	6543
6543-X	Linde Gases of the Southeast, Inc., Wilmington, NC	6543
6543-X	Linde Gases of the Mid-Atlantic, Inc., Moorestown, NJ	6543
6543-X	Linde Gases of the South, Inc., Houston, TX	6543
6543-X	Unigas, Inc., Mercedita, PR	6543
6543-X	Linde Puerto Rico, Inc., Gurabo, PR	6543
6543-X	Linde Gases of New England, Inc., West Hartford, CT	6543
6543-X	Linde Gases of the West, Inc., San Ramon, CA	6543
6543-X	Linde Gases of Southern California, Inc., Santa Ana, CA	6543
6694-X	Compagnie des Containers Reservoirs, Paris, France	6694
6927-X	Great Lakes Chemical Corp., El Dorado, Ar	6927
6927-X	Bromine Compounds, Limited, Beer-Sheva, Isreal	6932
6932-X	Arbel-Fauvet-Rail, Paris, France	6932
6971-X	AccuStandard, Inc., New Haven, CT	6971
7052-X	Eastman Christensen, Salt Lake City, UT	7052
7052-X	Matsushita Battery Industrial Co., Limited, Osaka, Japan	7052
7052-X	Beckman Instruments, Inc., Fullerton, CA	7052
7052-X	Duracell, Inc., Bethel, CT	7052
7259-X	FMC Corporation, Philadelphia, PA	7259
7285-X	Compagnie des Containers Reservoirs, Paris, France	7285
7548-X	U.S. Department of Defense, Falls Church, VA	7548
7640-X	Mauser Packaging, Limited, Litchfield, CT	7640

Application No.	Applicant	Renewal of exemption
7674-X	U.S. Department of Defense, Falls Church, VA	7674
7971-X	Walter Kidde, Wilson, NC	7971
8125-X	Compagnie des Containers Reservoirs, Paris, France	8125
8127-X	Hercules, Inc., Wilmington, DE	8127
8207-X	ChemRex, Inc., Commerce City, CO	8207
8308-X	Sky Cab, Inc., East Brunswick, NJ	8308
8308-X	American Courier Express Corp., Miramar, Fl	8308
8387-X	FMC Corp., Philadelphia, PA	8397
8445-X	Rohm and Haas Co., Philadelphia, PA	8445
8451-X	Ensign-Bickford Co., Simsbury, CT	8451
8451-X	Atlantic Research Corp., Gainesville, Va	8451
8451-X	Lockheed Missiles & Space Co., Inc., Palo Alto, CA	8451
8451-X	Explosive Technology, Inc., Fairfield, CA	8451
8451-X	U.S. Department of Energy, Washington, DC	8451
8451-X	ICI Americas, Inc., Valley Forge, PA	8451
8451-X	Battelle Columbus, Columbus, OH	8451
8467-X	Compagnie des Containers Reservoirs, Paris, France	8467
8489-X	FMC Corp., Philadelphia, PA	8489
8489-X	Degussa Corp., Ridgefield Park, NJ	8489
8554-X	Cherokee Products, Inc., Jefferson City, TN	8554
8854-X	Compagnie des Containers Reservoirs, Paris, France	8854
9001-X	Chesterfield Cylinder Limited, Derbyshire, England	9001
9066-X	Beyern-Chemie, GmbH, Ottobrunn, West Germany	9066
9166-X	Comptank, Corp., Bothwell, Ontario, CN	9166
9245-X	Contico Container, Norwalk, CA	9245
9248-X	Kross, Inc., Valencia, CA	9248
9262-X	Owen Oil Tools, Inc., Fort Worth, TX	9262
9266-X	Compagnie des Containers Reservoirs, Paris, France	9266
9279-X	Keystone Steel & Wire Co., Peoria, IL	9279
9367-X	Stone Container Corp., Schaumburg, IL [2]	9367
9418-X	West Texas Fabrication, Odessa, TX [3]	9418
9491-X	E.I. du Pont de Nemours & Co., Wilmington, DE	9491
9549-X	Shaped Charge Specialist, Inc., Mansfield, TX	9549
9595-X	IRECO, Inc., Salt Lake City, UT	9595
9606-X	Ensign-Bickford Co., Simsbury, CT	9606
9612-X	PPG Industries, Inc., Pittsburgh, PA	9612
9638-X	Allied-Signal Aerospace Co., Tempe, AZ	9638
9677-X	Allied Universal Corp., Miami, FL [4]	9677
9754-X	Armin Thermodynamics Corp., Broken Arrow, OK	9754
9806-X	Stone Container Corp.,Schaumburg, IL [5]	9806
9811-X	Container Products Corp., Wilmington, NC	9811
9823-X	Carleton Technologies, Inc., Orchard Park, NY	9823
9825-X	Sequoyah Fuels Corp., Gore, OK	9825
9846-X	Flexcon and Systems, Inc., Lafayette, LA [6]	9846
9851-X	Trans World Airlines, Inc., Kansas City, MO	9851
9865-X	Atlas Powder Co., Dallas, TX [7]	9865
9901-X	J.T. Baker, Inc., Phillipsburg, NJ	9901
9923-X	Chemical Handling Equipment Co., Inc., Toledo, OH	9923
9934-X	Advance Research Chemicals, Inc., Catoosa, OK	9934
9938-X	Explosive Technology, Inc., Fairfield, CA	9938
9953-X	ServiceMaster Co., Downers Grove, IL	9953
9953-X	National Starch and Chemical Corp., Bridgewater, NJ	9953
10170-X	Cleveland Steel Container, Cleveland, OH [8]	10170

[1] To modify paragraph 8F to provide for shipment of up to 3 grams of lithium instead of 2 grams of lithium.
[2] To modify exemption to include poison B solid as an additional comodity in collapsible polyethylene-lined woven polypropylene bulk bags.
[3] To authorize shipment of four portable tanks, not to exceed 110 gallons capacity each mounted on a truck chasis for shipment of various flammable corrosive liquids (oil well treatment compounds).
[4] To authorize shipment of hydrochloric acid in non-DOT specification polyehylene bottles of one-gallon capacity, overpacked in 55-gallon drums.
[5] To modify exemption to include poison B solid as an additional comodity n collapsible polyethylene lined woven polypropylene bulk bags.
[6] To authorize increase in capacity of polyethylene-lined woven polypropylene bag from 2200 pounds to 2300 pounds for shipment of certain hazardous materials.
[7] To authorize shipment of aqueous solution, classed as Class A explosive, in DOT specification 6D drums with DOT specification 29 liners in temperature controlled vans.
[8] To authorize water as an additional mode of transportation.

Application	Applicant	Parties to exemption
4453-P	Mauer & Scott, Inc., Lehigh Valley, PA	4453
6614-P	U.S. Chlorine, Inc., Miami, FL	6614
6874-P	Nisso America, Inc., New York, NY	6874
7052-P	Battery Specialties, Costa Mesa, CA	7052
7052-P	Nautronix, Inc., San Diego, CA	7052
7052-P	Wildlink, Inc., Brookly, Park, NM	7052
7052-P	Raynet Electronics Co., Inc., Houston, TX	7052
7052-P	Panasonic Industrial Co., Secaucus, NY	7052
7517-P	DPC Industries, Inc., Houston, TX [1]	7517
7607-P	Fluor Daniel, Inc., Greenville, SC	7607
7907-P	Aqualon Co., Wilmington, DE	7907
7909-P	Display Pack, Inc., Grand Rapids, MI	7909

Application	Applicant	Parties to exemption
7929–P	Brandywine Explosives & Supply, Inc., Paris, KY	7929
7945–P	McDonnell Douglas Helicopter Co., Mesa, AZ	7945
8127–P	Aqualon Co., Wilmington, DE	8127
8337–P	LWD Trucking, Inc., Calvert City, KY	8337
9048–P	EG&G Flow Technology, Inc., Phoenix, AZ	9048
9066–P	Takata North America, Inc., Auburn Hills, MI	9066
9552–P	Austin Powder Co., Cleveland, OH	9552
9723–P	Chemical Analytics, Inc., Romulus, MI	9723
9735–P	Farrell Lines, Inc., New York, NY	9735
9873–P	Aqualon Co., Wilmington, DE	9873
9915–P	Aqualon Co., Wilmington, DE	9915
10285–P	Proper Temp Leasing, Salinas, CA	10285
10285–P	Growers Vacuum Cool Co., Salinas, CA	10285
10285–P	C&D Cooling Co., Holtville, CA	10285

[1] To issue exemption originally held by Trinity Ind. authorizing them to mfg., marksell non-DOT spec. tank car tanks to be reissued as a shipper exemption to ship chlorine or sulfur dioxide.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 8, 1990.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 90–5886 Filed 3–14–90; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail Freight, 3—Cargo vessel, 4— Cargo-only aircraft, 5—Passenger-carring aircraft.

DATES: Comments must be received on or before April 16, 1990.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

New Exemptions

Application number	Applicant	Regulation(s) affected	Nature of Exemption Thereof
10334–N	Chevron Pipe Line Company, Midland, TX.	49 CFR 173.119, 173.304, 173.315	To authorize shipment of crude oil classed as a flammable liquid and liqefied petroleum gas, classed as a flammable gas in non-DOT specification containers (meter provers). (mode 1).
10335–N	U.S. Department of the Army, Falls Church, VA.	49 CFR 173.34(d), 178.53–12, 178.61–13	To authorize shipment of nonflammable gas in DOT-4BA and 4BW400 Specification cylinders with fusible pressure relief devices. (modes 1, 2, 3, 4, 5).
10336–N	Morton International, Inc., Ogden, UT.	49 CFR 173.93(a)(9)	To authorize shipment of a gas generator containing a propellant explosive (solid) Class B in container overpacked in a specially designed non-DOT aluminum box. (mode 1).
10339–N	Cryogenic Services, Inc., Canton, GA.	49 CFR 173.304, 178.57–10	To authorize the manufacture, mark and sell of non-DOT specification cylinders comparable to DOT specification 4BW, except they are constructed of 304 stainless steel, for shipment of liquified petroleum gas. (mode 1).
10340–N	Schutz Werk, Selters, West Germany.	49 CFR 173.118a, 173.119, 173.125, 173.245, 173.346, 176.340	To manufacture, mark and sell intermediate polyethylene bulk containers, enclosed in a steel casing, having a capacity of 285 gallons for transportation of flammable liquids, combustible liquids, and poison B material. (modes 1, 2, 3).
10342–N	Container Products, Newnan, GA	49 CFR 178.16–19(a)(3)	To authorize use of wheel style month and year of manufacture date clock with characters less than the required 1/4 inch minimum size for marking DOT-specification 35 containers. (mode 1).
10343–N	Cryogenic Services, Inc., Canton, GA.	49 CFR 178.57–8(c)	To manufacture, mark and sell non-DOT specification cylinders similar to DOT specification 4L, except it exceed the heat transfer limits, for shipment of oxygen, refrigerated liquid. (mode 1).
10344–N	U.S. Department of the Army, Falls Church, VA.	49 CFR 172.101, 172.420, 173.1015, 176.3	To authorize ocean transportation of used lithium batteries, for disposal, comprised of one or more cells. (mode 3).
10345–N	Luxfer USA Limited, Riverside, CA	49 CFR 173.302(a)(1), 175.3	To manufacture, mark and sell non-DOT specification cylinders containing nonflammable gases to be used as self-contained underwater breathing apparatus. (modes 1, 2, 3, 4, 5).

NEW EXEMPTIONS—Continued

Application number	Applicant	Regulation(s) affected	Nature of Exemption Thereof
10346-N	Weyerhaeuser Company, Tacoma, WA.	49 CFR 174.67(i), 174.67(j)	To authorize pre-hookup of liquid chlorine filled tank cars to unloading station in advance of unloading or to remain connected if unloading is discontinued. (mode 2).
10347-N	PPG Industries, Inc., Pittsburgh, PA.....	49 CFR 173.247	To authorize shipment of trimethylacetal chloride in DOT Specification 34 containers of 55 gallons capacity. (modes 1, 2, 3).

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 8, 1990.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch Office of Hazardous Materials Transportation.

[FR Doc. 90-5887 Filed 3-14-90; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 90-19]

Revocation of Individual Customs Broker's License No. 5987 Issued to Albert Kazangian

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury on January 4, 1990, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and (111.74 of the Customs Regulations, as amended (19 CFR 111.74)), revoked the individual Customs broker's license no. 5987 issued to Albert Kazangian. This action having received no appeal under 19 U.S.C. 1641(e), is effective as of March 5, 1990

Dated: March 8, 1990.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 90-5871 Filed 3-14-90; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 51
Thursday, March 15, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

Meeting

TIME AND DATE: 9:30 a.m., Tuesday, March 20, 1990.

PLACE: San Antonio Marriott Rivercenter, 101 Bowie Street, San Antonio, Texas 78205, (512) 223–1000.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Opening Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Proposed Rule: §§ 701.14, 741.7, and part 747, subpart L, Reporting Requirements for Newly Chartered and Troubled Credit Unions, NCUA's Rules and Regulations.
6. Proposed Amendment: Part 704 and § 741.6, Fixed Assets for Corporate Credit Unions, NCUA's Rules and Regulations.
7. Legislative Updates.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90–6102 Filed 3–13–90; 12:42 pm]

BILLING CODE 7535–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Meeting

TIME AND DATE: 9:30 a.m., Tuesday, March 27, 1990.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Application for CLF Agent Membership. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Delegation of Authority. Closed pursuant to exemptions (2) and (9)(B).
4. Administrative Actions under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Requests for Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Apportionment of Regional Staff. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90–6103 Filed 3–13–90; 12:42 pm]

BILLING CODE 7535–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 19, 1990.

A closed meeting will be held on Tuesday, March 20, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 20, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: March 12, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–6141 Filed 3–13–90; 3:58 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 55, No. 51
Thursday, March 15, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 21222-9299]

RIN 0625-AA04

Foreign-Trade Zones in the United States

Correction

In proposed rule document 90-1688 beginning on page 2760 in the issue of Friday, January 26, 1990, make the following correction:

§ 400.31 [Corrected]

On page 2766, in the first column, under § 400.31(c)(2), in the seventh line, "casual" should read "causal".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Correction

National Institutes of Health; Decision on Application for Duty-Free Entry of Scientific Instrument

In notice document 90-4679 beginning on page 7359 in the issue of Thursday, March 1, 1990, make the following correction:

In the third column, in the first paragraph, in the second line, "Education," should read "Educational,".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications; Charleston, SC

Correction

In notice document 90-3081 beginning on page 4650 in the issue of Friday, February 9, 1990, make the following correction:

On page 4650, in the second column, the heading should read as set forth above

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 900104-0004]

RIN 0693-AA81

Proposed Revision of Federal Information Processing Standard (FIPS) 54, Computer Output Microform (COM) Formats and Reduction Ratios, 16mm and 105mm

Correction

In notice document 90-4825 beginning on page 7516 in the issue of Friday, March 2, 1990, make the following correction:

1. On page 7516, the heading should read as set forth above.

2. On page 7517, in the second column, in the second paragraph from the bottom of the page, the first sentence should read "This revised standard is effective _____ (6 months after date of publication of final document in the **FEDERAL REGISTER**).

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PP 9G3765/T590; FRL 3685-5]

Myclobutanil; Establishment of Temporary Tolerance

Correction

In notice document 90-4687 beginning on page 7465 in the issue of Thursday, March 1, 1990, the cover page of Part VII is corrected to read, "Myclobutanil; Establishment of Temporary Tolerance; Notice".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

RIN 0960-AC51

Supplemental Security Income for the Aged, Blind, and Disabled; Interim Assistace Provisions

Correction

In proposed rule document 90-2853 beginning on page 4438 in the issue of Thursday, February 8, 1990, make the following correction:

§ 416.1901 [Corrected]

On page 4439, in the second column, under § 416.1901,"(1) *General.*" should read "(a) *General.*".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Amdt. 121-212]

Protective Breathing Equipment

Correction

In rule document 90-3520 beginning on page 5548 in the issue of Thursday, February 15, 1990, make the following corrections:

1. On page 5549, in the second column, in the fourth paragraph, in the seventh line, "certified" should read "certificated".

2. On the same page, in the same column, in the same paragraph, in the 15th line, "FAR" should read "FAA".

3. On page 5550, in the first column, in the 13th line, "closed" should read "located".

BILLING CODE 1505-01-D

federal register

Thursday
March 15, 1990

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 182

Sulfiting Agents; Revocation of GRAS Status for Use on Fresh Potatoes Served or Sold Unpackaged and Unlabeled to Consumers and Request for Data on Use of Sulfites on Frozen Potatoes; Rule and Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 182

[Docket No. 81N-0314]

RIN 0905-AB52

Sulfiting Agents; Revocation of GRAS Status for Use on "Fresh" Potatoes Served or Sold Unpackaged and Unlabeled to Consumers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations on sulfur dioxide, sodium sulfite, sodium and potassium bisulfite, and sodium and potassium metabisulfite (collectively known as "sulfiting agents" or "sulfites") to exclude their use on "fresh" potatoes that are intended to be served or sold unpackaged and unlabeled to the consumer from the uses of these substances that are generally recognized as safe (GRAS). This action is based on FDA's conclusion, following its review of the comments and information that it has received, that a consensus no longer exists among qualified experts that this use of sulfiting agents is safe. This action follows previous actions by the agency requiring that the labels of foods that contain a detectable level of sulfites declare their presence and revoking the GRAS status of the use of sulfites on fresh fruits and vegetables intended to be served or sold to the consumer raw.

EFFECTIVE DATE: April 16, 1990.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION:

I. Background

In 1982, FDA proposed to affirm that all known uses of sulfiting agents in food are generally recognized as safe (GRAS). The agency received numerous comments in response to that proposal including information about many new uses of sulfites and reports of adverse reactions that were attributed to consuming foods containing sulfites.

Continuing reports of adverse reactions, including several deaths, together with the new information received in response to the 1982 proposal, prompted the agency in July 1984 to ask the Federation of American Societies for Experimental Biology (FASEB) to reexamine the GRAS status of the use of sulfiting agents. FASEB issued its final report on the health aspects of the use of sulfiting agents on January 31, 1985.

FASEB found that, in some cases, sulfite-sensitive individuals have had life-threatening reactions following exposure to sulfite-treated foods. FASEB specifically noted that the use of sulfites on fresh fruits, fresh vegetables, and potato products had been shown to elicit adverse reactions. FASEB recommended that FDA use the regulatory process to encourage the food industry to discontinue the use of sulfites on precut potato products and on raw fruits and vegetables.

The agency also established an ad hoc Advisory Committee on Hypersensitivity to Food Constituents (the Advisory Committee) to examine the phenomenon of allergic-type adverse responses to food constituents, including sulfiting agents. The Advisory Committee issued its conclusions and recommendations regarding sulfiting agents on December 13, 1985.

The Advisory Committee found that sulfite-sensitive individuals are at moderate to high risk that they will suffer a severe reaction upon exposure to sulfites. The Advisory Committee specifically recommended that the GRAS status of the use of sulfites on "fresh" potatoes and on raw fruits and vegetables, with the exception of mushrooms, be revoked. The Advisory Committee noted that its recommendation would apply to "fresh" potatoes even though they are ultimately cooked. The Advisory Committee's reasoning for including "fresh" potatoes in its recommendation was the evidence of abusive uses of sulfites in this portion of the potato processing industry. The Advisory Committee also stated that the use of sulfites on frozen potatoes was unnecessary.

Based on the reviews by FASEB and the Advisory Committee, and on the agency's own review of the available evidence, the agency initiated several actions to minimize the risk to health from the use of sulfiting agents. First, the agency acted to provide individuals who are sulfite-sensitive with the information that they need to avoid certain processed foods that contain sulfiting agents. In the **Federal Register** of July 9, 1986 (51 FR 25012), FDA published a final rule requiring the listing on the label of nonstandardized food products of any sulfiting agent that is present in the finished food at levels of 10 parts per million (ppm) or more (21 CFR 101.100(a)(4)). (On December 19, 1988 (53 FR 51062), FDA proposed to require that the same information be included on the label of standardized foods.) Also, on July 9, 1986 (51 FR 25021), FDA revoked the GRAS status of the use of sulfiting agents on fruits and vegetables that are intended to be served or sold raw to consumers. (In the **Federal Register** of December 19, 1988 (53 FR 51065), FDA published a proposed rule that would affirm, with specific limitations, that certain uses of sulfiting agents are GRAS.)

Finally, in the **Federal Register** of December 10, 1987 (52 FR 46968), FDA announced its tentative conclusion that there is no longer a basis to find that the use of sulfites on "fresh" potatoes served or sold unpackaged and unlabeled to consumers is GRAS. The agency proposed to amend 21 CFR part 182 to exclude this use of sulfites from those that are listed as GRAS under part 182. FDA defined the term " 'fresh' potatoes" in the proposal as including all sulfite-treated potato products that are not canned, frozen, or dehydrated.

FDA published its tentative conclusion concerning the use of sulfites on "fresh" potato products after reviewing information on sulfiting agents from a variety of sources, including: (1) Comments on the proposal to affirm the GRAS status of sulfiting agents published in the **Federal Register** of July 9, 1982 (47 FR 29956); (2) the January 31, 1985, final report of FASEB on the Reexamination of the GRAS Status of Sulfiting Agents; (3) the hearing conducted by the Advisory Committee; (4) published reports in the medical literature; and (5) consumer complaints received by the agency.

Based on this review, the agency proposed to revoke the GRAS status of the use of sulfiting agents on "fresh" potatoes for the following reasons: (1) The agency's concern about continued adverse reactions to these potato products by sensitive individuals; (2) the trend that Americans are eating a greater portion of their meals in food service establishments; (3) the significant potential for misuse in the application of sulfiting agents to these potato products in retail food establishments; (4) the difficulty in informing consumers of the use/presence of sulfiting agents on "fresh" potatoes in food service establishments; and (5) the apparent lack of a consensus in the scientific community that the use of sulfites on "fresh" potatoes that are unpackaged and unlabeled is safe.

As noted in the proposal, the agency recognizes the difficulty and complexity in assessing the safe use of food and food ingredients, like nuts and shellfish, that are safe for the majority of the

public but that pose acute hazards for small subpopulations. As a general rule, FDA's policy is to address such problems by requiring package labeling that will disclose the presence of the potentially harmful ingredient to purchasers. This general principle is reflected in the previously issued regulations governing sulfites in packaged foods. Sulfite-sensitive individuals can, by reading the label of packaged foods, avoid products that contain sulfites.

The agency also stated in the proposal, however, its belief that labeling may not be an effective means of protecting sulfite-sensitive individuals from such sulfited foods as fruits and vegetables that are served or sold raw to consumers and "fresh" unpackaged potatoes that are served or sold by retail food service establishments. These types of foods are traditionally unlabeled when presented to consumers. They also are presented to consumers as "fresh," thereby suggesting that preservatives have not been used in their preparation. Ingestion of these types of foods has been reported to be associated with life-threatening responses in sulfite-sensitive individuals and, in some cases, with death. Therefore, FDA found that the use of sulfites on fruits and vegetables served or sold raw to consumers is not GRAS and proposed to make a similar finding for "fresh" potatoes.

FDA initially allowed a period of 60 days, to February 8, 1988, during which interested persons could review the proposal and other relevant information on "fresh" potatoes. The agency subsequently extended the comment period to March 9, 1988, at the request of some interested parties (53 FR 4184; February 12, 1988). The agency requested that comments be submitted during this time by all interested persons on all relevant issues relating to the published proposal. The agency specifically sought comments relating to the following issues:

1. Whether FDA should extend the scope of the proposed action to include the use of sulfites in or on canned, dehydrated, or frozen potatoes that are intended to be sold or served unpackaged and unlabeled to consumers;

2. Whether there is an association between exposure to sulfite-treated potatoes and allergic-type responses in sulfite-sensitive individuals;

3. Whether there is scientific evidence that establishes safe conditions of use for sulfiting agents on potatoes; and

4. Whether there are practical alternatives to the use of sulfiting agents on potatoes.

Additionally, the agency invited comments on the practicality and desirability of alternative labeling approaches. The agency also requested substantive data concerning the economic impact of this proposed action.

II. Comments

A. Introduction

FDA received 193 comments in response to the proposal concerning "fresh" potatoes. Individual consumers submitted 128 of these comments. The remaining comments were submitted by health professionals and health organizations (6); State and local government officials (2); Congress (26); a foreign government (1); trade associations (10); the affected industry (16); a consultant (1); a food scientist (1); and consumer groups (2). For the purposes of this discussion, the term "affected industry" refers to both processors and users of sulfited potato products.

Almost all of the comments agreed with FDA's preliminary conclusions that the use of sulfites on "fresh" potatoes served or sold unpackaged and unlabeled to consumers is not GRAS. Of the 16 comments received from the affected industry, 7 were in favor of the proposal, and all but one of the 128 comments received from consumers supported FDA's proposed actions.

The majority of the comments from consumers were from individuals who had experienced adverse reactions themselves from ingesting sulfited foods. The one comment from a consumer that did not support the proposed ban recommended labeling.

All of the comments received from health professionals and health organizations agreed that the use of sulfites on "fresh" potatoes that are served or sold unpackaged and unlabeled to consumers is not safe.

Most of the comments from consumers, consumer groups, health professionals, and State and local government officials went beyond the proposal and requested that FDA revoke the GRAS status of the use of sulfites on all types of potatoes or in all foods.

On the other hand, some comments from industry, trade associations, and members of Congress suggested that the establishment of levels for the use of sulfites or labeling would provide sufficient protection of the sulfite-sensitive individual.

Most of the comments to the proposal were not accompanied by supporting data or information but merely expressed the opinion of the individual. This failure to provide supporting data has prevented the agency from verifying through calculations or other means the allegations made in the comments. Despite the agency's efforts to obtain additional data, these data have not been forthcoming.

The issues raised in the comments and the agency's responses are given below.

B. Adverse Reactions to Sulfites

The agency continues to receive and to monitor reports of adverse reactions to sulfiting agents from consumers. The number of reports received by the agency has decreased in recent years following the regulatory actions that have been undertaken by the agency. Over this period, there has been an increasing awareness of this problem among sensitive individuals.

Some consumers submitted anecdotal information in their comments to the proposal about adverse reactions that they or someone they knew suffered from ingesting sulfited foods. The reactions to sulfites described by consumers included headaches, disorientation, blurry vision, drowsiness, aching body muscles, swelling of the face, anaphylactic shock, wheezing, throat closing up, gastrointestinal problems, diarrhea, coughs, sniffles, and difficulty breathing. For many of these individuals, the symptoms described lingered for several days. Nine of the consumers who reported experiencing adverse reactions to sulfites also stated that they are not asthmatic.

Only one comment contained data on allergic reactions to sulfites in potatoes that had not previously been considered by the agency. These data were derived from a study of asthmatic individuals who had been diagnosed as sulfite sensitive. In a double-blind challenge with sulfited dehydrated potatoes, one patient reacted adversely. However, this response could not be duplicated on a second occasion. Thus, because of the lack of duplication, the agency considers the observed reaction to be an inadequate basis on which to draw conclusions about the effects of ingesting sulfites in dehydrated potatoes.

Other comments asserted that the adverse reactions that were reported in the proposal occurred in California. These comments suggested that these reactions may represent an abusive use of sulfites on "fresh" potatoes unique to that State. The comments argued that the use of sulfites on "fresh" potatoes should not be prohibited on a national basis because of findings from only California.

In the Adverse Reaction Monitoring System maintained by the agency, 12 percent of all adverse reactions attributable to sulfiting agents were caused by potato products (Ref. 1). "Fresh" potato products accounted for 50 percent of these adverse reactions. Considering that only 2 percent of the total U.S. potato production (Ref. 2) goes into "fresh" potato products, and that "fresh" potato products constitute only about 5 percent of processed potatoes (excluding chips), the incidence of adverse reactions associated with "fresh" potatoes is disproportionately large. Additionally, of the 17 deaths that have been associated with the use of sulfites in foods, four were attributed to the consumption of "fresh" potato products.

The agency acknowledges that four of the five serious adverse reactions that were cited in the proposal occurred in California, and that the proposal referenced data generated in California. However, the agency has also received data that establish that there have been adverse reactions involving the use of sulfites in "fresh" potatoes in several other areas of the country. Therefore, the agency concludes that the data demonstrate that the problems associated with the ingestion of "fresh" potato products are not uniquely associated with California, and that the use of sulfites on "fresh" potatoes may render the food injurious to health.

C. Labeling and Education as Alternatives

A number of comments stated the belief that informing the consumer through labeling and education could mitigate or obviate the need to ban the use of sulfites on "fresh" potatoes. One comment, from a trade association, objected to the use of labeling as an alternative.

The agency has traditionally relied on ingredient labeling of food as the best means to inform a subpopulation of sensitive individuals that a food contains an ingredient that the individuals may want to avoid. However, the use of food additives and GRAS substances in a restaurant presents a very different situation for the sensitive individual because in this setting, foods are typically unlabeled. In such a case, the sensitive individual must rely on knowledge gained by reading food labels for products in the retail market to identify those foods that should be avoided.

There is no counterpart product for "fresh" potatoes in the retail market and thus no opportunity for the sulfite-sensitive individual to learn of the types of "fresh" potato products that might contain sulfites. Thus, in a restaurant, if a consumer inquires about the source of potato products, the consumer is likely to be told that the potatoes are frozen, canned, dehydrated, or "fresh." Based on experience with labeled products, the consumer is likely to know that canned and dehydrated potato products contain sulfites, and a sensitive individual can avoid them. However, the term " 'fresh' potatoes" is ambiguous as to the source of potatoes because it describes potato products that are prepared on site or purchased by the restaurant and that either contain or do not contain sulfites. Thus, when presented with a choice in a restaurant concerning "fresh" potatoes, the sulfite-sensitive individual would have no basis upon which to make a selection and might unwittingly make a choice that would expose him/her to sulfites. With the effective date of this final rule, the consumer will know that "fresh" potatoes will not contain sulfites.[1]

The agency has encountered strong resistance to any labeling in restaurants and other food service establishments. Specific labeling by means of menus or signs in food service establishments is not customary. Consequently, labeling requirements would be extremely difficult to enforce by any level of government, be it Federal, State, or local. At one time, FDA encouraged the States to require retail food establishments to place signs at their salad bars advising consumers of their use of sulfites. This effort proved to be unsatisfactory in that compliance was poor, and adverse reactions continued. Also, comments received from the National Restaurant Association state that its members are opposed to a labeling requirement for food service establishments on the grounds that such a requirement would not be effective.

During its deliberations on the proposed rule, the agency did consider the possibility that "fresh" potatoes would continue to be GRAS if processors who supply them to food service establishments clearly labeled the potatoes as containing sulfites, so that restaurant employees would be able to provide information to consumers who inquire as to whether sulfites are used. Although the agency specifically requested comments on this alternative, it has not received any comments from food service institutions that support this approach. To the contrary, the information on this alternative available to the agency demonstrates that this approach is not practical because consumers have reported that food service employees may be unknowledgeable or indifferent. One comment reported witnessing "allergic individuals having a sulfite asthmatic attack after eating potatoes in a facility that stated in writing that they did not use sulfites."

The agency agrees that an educational program could be useful. However, for the reasons noted in this section, the agency believes that education alone is not sufficient to eliminate the potential for adverse reactions that could be caused when sulfite-sensitive individuals ingest sulfited "fresh" potato products.

D. Establishment of Current Good Manufacturing Practice (CGMP) Levels

Comments from some trade associations, potato processors, members of Congress, and a food scientist stated that the establishment of controls on the use of sulfites on "fresh" potatoes would be sufficient to protect the public health. Some of these comments noted that the agency should recognize that potato processors are currently using less sulfites than they were in 1985. The specific approaches that were suggested to address the use of sulfites on "fresh" potatoes were: (1) Adoption of limits on the levels of sulfites that may be added to potatoes; (2) restricting the use of sulfites to certified processors who could demonstrate the ability to control residual sulfite levels; and (3) delaying action while research is conducted to determine safe levels of sulfite use. The only comment that included data not before the agency at the time the proposal was issued was from the food scientist. These data were related to residual levels of sulfites in dehydrated potatoes and non-potato products. The food scientist argued that the relevant consideration in establishing safe conditions of use for sulfites is the residual level of sulfite in the food as served to the consumer.

As noted above, the agency's determination that the use of sulfites on "fresh" potato products is not GRAS is based on a number of factors including: (1) The reports of severe life-threatening responses in asthmatic individuals who consumed sulfited "fresh" potato products in food service establishments; (2) the potential for abuse in the use of sulfites on "fresh" potatoes; (3) the lack of any effective means by which sulfite-sensitive individuals can be informed of the presence of sulfites on unpackaged

[1] For frozen potatoes, the issues are more problematic. Because sulfites are often not used on these products, there is a significant question as to whether consumers would be aware that sulfites may be found on these products. The agency's concerns about this use of sulfites are discussed in section II E of this document.

and unlabeled "fresh" potatoes served or sold in retail food establishments and thus of any means by which they can avoid unwitting exposure to sulfite-treated "fresh" potato products; and (4) the lack of consensus among qualified experts, as evidenced by the FASEB and the Advisory Committee recommendations, that the use of sulfites on "fresh" potatoes is safe.

Even if (1) the potential for abuse is eliminated as a factor, and (2) the relevant consideration in establishing safe conditions of use for sulfites is the residual level of sulfite in the food as served, the fact is that science has yet to establish a residual level of sulfites in "fresh" potatoes that will not cause a reaction in sensitive individuals. This fact, plus the fact that the potential for unwitting exposure to sulfites from "fresh" potatoes is particularly high because of the lack of any corresponding labeled consumer products, has led the agency to conclude that establishment of controls on the level of sulfites in "fresh" potato products would not be adequate to protect the public health. Furthermore, research of the type suggested by the comments could take years to complete. The agency believes that it would be inappropriate to delay regulatory action on "fresh" potatoes pending the completion of research that may provide a basis on which to establish safe levels of use.

Moreover, no information has been submitted that demonstrates to the agency that the problem with sulfites on "fresh" potatoes could be alleviated if controls to limit use to current good manufacturing practice (CGMP) levels were to be established. In determining, tentatively, those uses of sulfites that it could propose to affirm as GRAS in the document that published on December 19, 1988 (53 FR 51065), the agency used the following considerations: (1) The existence of labeling to ensure safety for sulfite-sensitive individuals, and (2) the existence of a chronic acceptable daily intake to ensure safety for long-term exposure to uses of sulfites governed by CGMP levels. Both of these conditions exist for the uses identified in that proposal. However, the condition listed at least in item 1 does not exist for the use of sulfites on "fresh" potatoes.

The agency has tried both formally (in the proposal) and informally to get all interested parties to come forward and present information that would permit the agency to reevaluate its tentative judgment on CGMP levels for sulfites in "fresh" potatoes. Despite these attempts, information has not been forthcoming. Therefore, a convincing basis for concluding that the establishment of CGMP limitations would provide safe conditions for the use of sulfites on "fresh" potatoes does not exist.

E. Issues Related to Canned, Dehydrated, and Frozen Potatoes

Several comments urged FDA not to include canned, dehydrated, or frozen potatoes in the proposed ban. Two comments from trade associations, however, urged FDA to extend the ban to cover these types of potatoes. Another comment recommended that frozen potatoes be included in the proposed ban, but that dehydrated potatoes should not be included. As noted earlier, a number of comments were received that stated that these uses (or all uses of sulfites) should be banned.

One comment from a food service establishment questioned the exclusion of canned, dehydrated, and frozen potato products from the proposed action. Another comment from the food service industry supported the proposal but argued that the proposal should not extend to dehydrated potatoes for food service use.

One comment, from a consumer group, stated that the use of sulfites on unlabeled frozen, canned, and dehydrated potatoes poses as great a risk as the use of sulfites in unlabeled "fresh" potatoes. In support of this contention the comment presented a synopsis of publicly available agency documents and of the comments the agency received in response to the proposal. The thrust of this comment's argument was that FDA's own epidemiological surveillance data show more serious sulfite reactions to non-"fresh" potatoes than to "fresh" potatoes.

The agency has considered these comments and concludes that no evidence has been submitted that would lead the agency to believe that the use of sulfites in or on dehydrated or canned potatoes will render those potatoes injurious to health. This position is consistent with several factors.

First, it is consistent with the recommendations of the Advisory Committee. The Advisory Committee noted that it was concerned about canned or dehydrated potatoes only "* * * to the extent that they would have to be labeled if they contain sulfite and that the sulfites are necessary, and that the minimum amounts of sulfites necessary to achieve the desired effects are being used * * *."

Second, sensitive individuals will know from reading labels that canned and dehydrated potatoes contain sulfites. The agency believes that sulfite-sensitive individuals, by paying attention to the labeling of these products, will be aware when they are in settings in which foods are not ordinarily labeled, such as in restaurants, that certain types of dishes are likely to have been prepared from dehydrated or canned potatoes and thus may contain sulfites. Consequently, they will know to avoid such dishes.

Finally, it is much easier for food service personnel to determine whether potatoes are canned or dehydrated than whether they are sulfited or nonsulfited "fresh" potatoes. Thus, with canned and dehydrated potatoes, it is more likely than with "fresh" potatoes that the sulfite-sensitive individual will receive the information he/she needs to know to avoid the product.

The situation is not as clear with frozen potato products. One comment, from a trade association of frozen food producers, stated that its members do not use sulfites to any significant extent in frozen potato products, and that many of its members do not employ sulfites in frozen potato products at all. This trade association stated that it represents, among others, frozen potato processors who produce 80 percent of the frozen potato products produced in this country. Moreover, the Advisory Committee stated that sulfites are not necessary in frozen potato products.

In view of these comments, the agency believes that the possibility exists that sulfite-sensitive consumers may not encounter frozen potato products that are sulfited and labeled to that effect in the retail marketplace. Thus, when presented with dishes prepared from sulfited frozen potatoes in the restaurant setting, the sulfite-sensitive consumer may not know that it is necessary to avoid such dishes to avoid exposure to sulfites.

In an attempt to clarify the issue of the use of sulfites on frozen potato products, the agency is publishing elsewhere in this issue of the **Federal Register,** a notice requesting data on the extent of the use of sulfiting agents on frozen potato products. The agency is requesting data on the levels of use of sulfiting agents on frozen potato products, methods of treatment, purpose for treatment, and the safety of this use. The agency is also requesting data on the economic impact of a finding that this use is not GRAS. Upon receipt of these data, the agency will review them and decide what action is appropriate with respect to the GRAS status of the use of sulfites on frozen potato products as part of the rulemaking initiated with its proposal of December 19, 1988 (53 FR

51065), to affirm that certain uses of sulfites are GRAS.

F. Other Issues

1. One comment urged the agency to exempt "fresh" potatoes from the sulfite ban where the ultimate use of the potatoes is at a health-care facility with in-house professional dietary controls. The main points presented in this argument were that these places have professional dietary staffs responsible for preparing the menus, and that they also have a record of the patients' allergies. These facilities can protect individuals because these patients would not be served the offending food or chemical that may cause the adverse reaction.

The agency recognizes that health-care facilities control some diets. However, the agency is of the opinion that to say that sulfite-treated "fresh" potatoes are GRAS where the ultimate use of these products is at a health-care facility or othe institution with in-house professional dietary controls is not acceptable. This use of sulfites is too narrow in scope for what the agency has traditionally considered for GRAS affirmation. Moreover, even if the in-house dietary controls worked properly all of the time, one would have to consider the likelihood that visitors may eat at some of these institutions without the visitors' medical history being known to the institutional staffers. Sulfite-sensitive individuals who visit these institutions and consume "fresh" potatoes would most likely be exposed unwittingly. Therefore, the agency is not exempting "fresh" potatoes served in institutional or health-care facilities from this action.

The agency believes that such a specific use application could be entertained only under the provisions of the food additive regulations. Parties interested in pursuing specific use applications for sulfites in "fresh" potatoes should submit a petition to FDA in accordance with 21 CFR 171.1 for the agency's evaluation.

2. One comment from a processor of potato products sought clarification as to whether there cooked potato products that use sulfite treatment in conjunction with other processing techniques are exempted from the proposed rule. In subsequent meetings with this firm, it was established that their products are sold as ready-to-use in the restaurant and food service market.

The agency notes that all of the adverse reactions to "fresh" potatoes occurred even though the potatoes had been cooked. The agency believes that potato products that are offered to the consumer as "fresh" will continue to expose the consumer unwittingly to sulfites.

In the preamble to the proposal, the agency defined "fresh" potatoes as those potatoes that are not canned, frozen, or dehydrated. This definition enables the sulfite-sensitive individual, by reading labels, to learn to identify those types of products that are likely to contain sulfites. There is no counterpart on the retail market for "fresh" potatoes, including the cooked potato products described above, that would permit consumers to learn to recognize that these products may contain sulfites, and that sulfite-sensitive individuals should avoid them.

Because these cooked potato products could lead to unwitting exposure to sulfites by sulfite-sensitve individuals, the agency does not believe that the use of sulfites in these kinds of potato products is GRAS. Therefore, the agency concludes that potatoes processed as described in the comment are included among those uses that are no longer GRAS.

3. One comment claimed that the proposal creates a major inequity between "fresh" potatoes and other vegetables. This comment maintains that the use of sulfites on vegetables is permitted if they are cooked before reaching the consumer, whereas FDA is proposing to ban sulfites on "fresh" potatoes even though they are also cooked before reaching the consumer.

The agency does not agree that this proposal creates a major inequity between "fresh" potatoes and other vegetables concerning sulfites. In the Federal Register of December 19, 1988 (53 FR 51065), the agency considered the uses of sulfites that are GRAS. The agency proposed to affirm as GRAS the use of sulfites in canned vegetables, including canned potatoes, at a maximum level of 30 parts per million (ppm) and in dehydrated vegetables at 200 ppm (500 ppm for dehydrated potatoes). It did not propose to affirm as GRAS the use of sulfites on fresh vegetables that are subsequently cooked and served or sold unlabeled to the consumer. Thus, FDA's treatment of the use of sulfites on "fresh" potatoes and on other vegetables is consistent.

III. Conclusions on Safety

After evaluating the issues and information presented in the comments on the proposal and all other evidence, the agency has determined that a consensus does not exist that the use of sulfiting agents on "fresh" potatoes that are served or sold unpackaged and unlabeled to consumers is safe. Despite the actions described (research, education, selective certification, institutional use) to control consumer exposure to sulfites in "fresh" potatoes, the agency finds that the potential remains for unwitting consumer exposure to these chemicals. When a sulfite-sensitive individual experiences such exposure, he/she is very likely to suffer an allergic-type reaction. Therefore, FDA concludes that this use of sulfites can no longer be considered to be GRAS.

Consequently, the agency is amending part 182 to exclude the use of sulfiting agents on "fresh" potatoes that are served or sold unpackaged and unlabeled to consumers from the uses of sulfiting agents that are GRAS. The use of sulfiting agents on "fresh" potatoes intended to be served or sold unpackaged and unlabeled to consumers would constitute the use of unapproved food additives and would, therefore, cause any "fresh" potatoes to which they have been added to be adulterated and in violation of section 402(a)(2)(C) of the act (21 U.S.C. 342(a)(2)(C)).

No comments that asserted a prior sanction were submitted in response to the proposal. As noted in the proposal, the agency recognizes that the use of sulfites on potatoes predates 1958, and that the use of sulfites on one or more specific potato products may be the subject of a prior sanction. However, reliance on that sanction would not be sufficient justification to continue this use of sulfiting agents. While a prior sanction may exempt a substance from being a food additive under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)), use of that substance would still be unlawful because it would render the food adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)).

IV. Issues Related to Economic Impact

In the December 10, 1987, proposal (52 FR 46968 at 46976), FDA noted that it had examined the economic impact of deciding that the use of sulfites on "fresh" potatoes is not GRAS. The agency discussed the health concerns that prompted the action, certain possible responses to this action by restaurants and the food service industry, and the resultant cost impacts of the proposed action. In recognition of the uncertainty in its estimate of the cost impacts, the agency requested "substantive data concerning the proposed action or other regulatory options to be used in a regulatory impact analysis or a regulatory flexibility analysis." No new data were submitted in response to the proposal that could be used as a basis for a reassessment of the economic impacts

of declaring that the use of sulfites on "fresh" potatoes that are served or sold unlabeled and unpackaged to consumers is not GRAS. The agency discusses below the specific comments that it received that related to the economic impact of the proposal.

A. Direct Economic Effects

Comments from a trade association and a processor claimed that the proposal on the use of sulfites on "fresh" potatoes should be classified as a major rule because the proposal as written grossly underestimates its financial impact. According to these comments, there are no practical alternatives to sulfites. Therefore, because the ban would virtually eliminate the market for "fresh" potatoes, its economic impact would make it a "major rule." According to these comments, the alternative products are more expensive, some potato growers would be left without a market, and some employees would lose their jobs. Specifically, the comments claimed that 2,500 or more jobs would be lost, 50 to 100 potato processors/potato growers would be forced out of business, and $115 to $153 million in sales would be displaced or lost.

The processor of sulfited potato products claimed that a ban on sulfites at the processor level would force it to cease its "fresh" potato operations. This firm stated that it supplies "fresh" potato products to all State-operated health care institutions in eastern and metropolitan New York, all municipal New York City hospitals, and all Marine Corps bases in North Carolina and South Carolina. This firm stated that its "fresh" potato processing business accounts for over $2 million in gross revenues. Its "fresh" potato processing business employs 40 individuals full time, including 25 handicapped persons.

The threshold assessment evaluated all the information available to the agency at the time of publication of the proposal. The threshold assessment discussed the expected economic impacts on users of "fresh" potato products and on processors and suppliers of "fresh" potato products (Ref. 2).

With regard to potato growers, the agency does not have any data to support the view that they will go out of business as a result of this final rule. FDA has received information from potato growers that indicated that "fresh" potato processors usually purchase the lower grades of potatoes for their operation (Ref. 3). According to the United States Department of Agriculture (USDA), however, "fresh" processed potatoes are of the same grade as fresh unprocessed potatoes sold in supermarkets, so that any potatoes not sold to processors will be sold in supermarkets (Ref. 4). In the latter case, the price differential is small enough so that growers should not suffer a large loss. Either way, FDA believes that most growers will continue to sell to the "fresh" potato processors as most "fresh" potato processors will continue to produce their product with sulfite substitutes. The agency has received comments that indicated that alternative methods would increase costs of the products by less than 2 cents per pound. Moreover, because "fresh" potato processors use only 2 percent of the potatoes produced in this country, it is unlikely that any potato growers will go out of business because of this action.

With respect to the comment concerning the direct economic impact on "fresh" potato processors, FDA acknowledges that most of the impact of this regulation will be borne by this segment of the industry. However, the agency believes that the survey upon which the figures contained in the comment were based was flawed. Estimates of sales and numbers of employees were based on all products that these firms produce, not just "fresh" potatoes. Many of the firms that produce "fresh" potatoes also produce other potato products and other prepared vegetables (Ref. 5). Thus, the numbers of total employees and sales were overestimated. Moreover, at the time this survey was conducted (March 1986), much of the recent innovation in sulfite substitutes had not yet been completed. As a consequence, most producers believed that they would no longer be able to produce "fresh" potato products without sulfites because there were no viable substitutes at the time, and they responded to the questions accordingly. There are now a number of viable, albeit more expensive, substitutes on the market.

Thus, the agency finds that the data available to the agency do not provide any basis to conclude that there will be substantial lost or displaced sales or unemployment as a result of this action. Furthermore, FDA does not believe that any firms will go out of business as a result of this final rule. What is more likely is that processors will use one of the chemical sulfite alternatives currently available which are discussed in the next section of this document, possibly accompanied by a modified production procedure and delivery schedule. Furthermore, FDA considers it likely that adoption of this final rule will spur development of more and better chemical and processing alternatives to sulfites. Because of adverse publicity surrounding sulfites, some "fresh" potato processors already have changed to sulfite-free "fresh" potato processing (Refs. 6 and 7).

Based on the above considerations, the agency concludes that the use of sulfiting agents by "fresh" potato processors is not universal, and that current users have not demonstrated that they are economically dependent on sulfiting agents. Therefore, the agency concludes that, given the available information, this regulation will not produce a major economic impact on "fresh" potato processors or a significant economic impact on a substantial number of small entities.

B. Possible Substitutes for Sulfites

Several comments addressed the use of substitutes for sulfites. Members of Congress reported on a survey conducted by the "fresh" potato processing industry. The study found that 94 percent of the 33 respondents stated that they had tried substitutes for sulfites, but that the results were unsatisfactory. The comments did not state why the substitutes were considered unsatisfactory.

On the other hand, one comment from a processor of "fresh" potato products stated that it had not used sulfites since June 1986, and that it had produced products that are adequate to serve a market area with an approximately 400-mile radius. Another comment, from a processor of "fresh" potato products, stated that it has two client companies using its nonsulfite process on "fresh" potatoes, and that these companies have been using its process for over 2 years. A comment from a chemical supplier contended that numerous alternatives to sulfites are available for potatoes and specifically recommended its brand of sodium polyphosphate. Another comment, from a research company, indicated that it has an alternative product available that adds approximately 1 cent per pound to the price of processed potatoes while giving a shelf life of 7 to 10 days. According to this comment, if special packaging is used, the shelf life can be extended beyond 10 days. These comments have generally lacked specifics that would enable the agency to weigh them against the comments that alternatives do not work satisfactorily.

A blanket statement that none of the sulfite-free processes work is belied by the evidence that there are companies marketing "fresh" potato products that do not use sulfites. This evidence supports the conclusion that there are alternatives to sulfites. FDA has had informal discussions with some of these processors. Although they refused to

provide details on proprietary information to the agency, these processors have indicated that they are willing to make their processes available to the "fresh" potato industry.

A comment from a trade association stated that one potential alternative, EDTA (ethylenediaminetetraacetic acid), is not approved by FDA for use on "fresh" potatoes. This comment asked whether the agency would be inclined to put a food additive petition for a substitute for sulfites, such as EDTA, on a fast track.

The agency notes that the length of time necessary to amend food additive regulations is dependent on several variables. Foremost among these variables is the thoroughness and adequacy of the submitted petition in terms of the data required (e.g., chemistry and toxicological data) to demonstrate that the requested use of the substance is safe, and that the substance will have its intended technical effect. Therefore, most of the variables that control the length of time required for the agency to act on a petition are under the control of the petitioner. Nevertheless, consistent with its other priorities, the agency would agree to give prompt attention to petitions for substitutes.

The agency notes that existing safety data for EDTA support only the listed food additive uses of the ingredient. Expanded uses would likely require additional toxicity studies.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. The agency determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would cause it to alter that determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would cause it to alter that determination.

The agency's findings of no major economic impact and of no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857.

V. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposal (December 10, 1987; 52 FR 46968). No new information or comments have been received in response to the proposal that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated January 3, 1989, from Chief, Clinical Nutrition Section to Health Hazards Evaluation Board, "Quarterly Report on Adverse Reactions Associated with Sulfiting Agents".

2. "Threshold Assessment of the Proposed Rule to Revoke the GRAS Status of Sulfiting Agents on 'Fresh' Potatoes", prepared by the Office of Planning and Evaluation, FDA.

3. Memorandum of Conference, held February 21, 1989, between FDA and the National Potato Council.

4. Memorandum of Telephone Conversation between Richard A. Williams, Jr., FDA, and Shannon Hamm, USDA, May 16, 1989.

5. "An Economic Impact Study of a Food and Drug Administration Potential Ban on the Use of Sulfites for Fresh Processed Potatoes—Prepared for the National Coalition of Fresh Potato Processors," by Agri-Commodities, Inc., March 1986.

6. Letter dated February 4, 1988, from John W. Hodder, Double D Foods, Inc., P.O. Box 988, Pleasanton, CA 94566, to Dockets Management Branch, FDA.

7. Letter dated February 5, 1988, from Dennis Hawley, President, Beacon Street Kitchen, P.O. Box 2464, South San Francisco, CA 94083, to Dockets Management Branch, FDA.

List of Subjects in 21 CFR Part 182

Food ingredients, Food packaging, Spices and flavorings.

Therefore, under the Federal Food, Drug, and Cosmetic Act, 21 CFR part 182 is amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 182 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 182.3616 is amended by revising paragraph (c) to read as follows:

§ 182.3616 Potassium bisulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with current good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to the consumer as fresh; and on "fresh" potatoes that are intended to be served or sold unpackaged and unlabeled to the consumers. For purposes of this paragraph the term " 'fresh' potatoes" applies to any form of potato other than frozen, canned, or dehydrated potatoes.

3. Section 182.3637 is amended by revising paragraph (c) to read as follows:

§ 182.3637 Potassium metabisulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with current good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to the consumers as fresh; and on "fresh" potatoes that are intended to be served or sold unpackaged and unlabeled to the consumer. For purposes of this paragraph the term " 'fresh' potatoes" applies to any form of potato other than frozen, canned, or dehydrated potatoes.

4. Section 182.3739 is amended by revising paragraph (c) to read as follows:

§ 182.3739 Sodium bisulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with current good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to the consumer as fresh; and on "fresh" potatoes that are intended to be served or sold unpackaged and unlabeled to the consumer. For purposes of this paragraph the term " 'fresh' potatoes" applies to any form of potato other than frozen, canned, or dehydrated potatoes.

5. Section 182.3766 is amended by revising paragraph (c) to read as follows:

§ 182.3766 Sodium metabisulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with current good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to the consumer as fresh; and on "fresh" potatoes that are intended to be served or sold unpackaged and unlabeled to the consumer. For purposes of this paragraph the term " 'fresh' potatoes" applies to any form of potato other than frozen, canned, or dehydrated potatoes.

6. Section 182.3798 is amended by revising paragraph (c) to read as follows:

§ 182.3798 Sodium sulfite.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with current good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to the consumer as fresh; and on "fresh" potatoes that are intended to be served or sold unpackaged and unlabeled to the consumer. For purposes of this paragraph the term " 'fresh' potatoes" applies to any form of potato other than frozen, canned, or dehydrated.

7. Section 182.3862 is amended by revising paragraph (c) to read as follows:

§ 182.3862 Sulfur dioxide.

* * * * *

(c) *Limitations, restrictions, or explanation.* This substance is generally recognized as safe when used in accordance with current good manufacturing practice, except that it is not used in meats; in food recognized as a source of vitamin B_1; on fruits or vegetables intended to be served raw to consumers or sold raw to consumers, or to be presented to the consumer as fresh; and on "fresh" potatoes that are intended to be served or sold unpackaged and unlabeled to the consumer. For purposes of this paragraph the term " 'fresh' potatoes" applies to any form of potato other than frozen, canned, or dehydrated.

Dated: March 8, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services

[FR Doc. 90-5932 Filed 3-14-90; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 182

[Docket No. 81N-0314]

Sulfiting Agents; Request for Data on the Use of Sulfites on Frozen Potatoes

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for data.

SUMMARY: The Food and Drug Administration (FDA) is requesting the submission of data, information, and views on the use of sulfur dioxide, sodium sulfite, sodium and potassium bisulfite, and sodium and potassium metabisulfite (collectively referred to as "sulfites" or "sulfiting agents") on frozen potato products. The agency needs this information to aid in evaluating the GRAS status of this use of sulfiting agents. Published elsewhere in this issue of the **Federal Register** is a final rule on the use of sulfites on "fresh" potatoes.

DATES: Information to be submitted by May 14, 1990.

ADDRESSES: All information is to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 10, 1987 (52 FR 46968), FDA proposed to revoke the GRAS status of the use of sulfites on "fresh" potatoes served or sold unpackaged and unlabeled to consumers. In that proposal, the agency also asked for comments on other uses of sulfites on potatoes, including use on frozen potatoes. Most of the comments addressing the issue of other uses of sulfites on potatoes did not provide data but requested that the use of sulfites on canned, dehydrated, or frozen potatoes not be banned.

Published elsewhere in this issue of the **Federal Register** is a document addressing the use of sulfites on "fresh" potatoes wherein the agency is announcing its finding that that use is not GRAS. The agency reached this conclusion for the following reasons: (1) The agency's concern about continued adverse reactions to "fresh" potato products by sensitive individuals; (2) the trend of Americans to eat a greater portion of their meals in food service establishments; (3) the significant potential for misuse in the application of sulfiting agents to "fresh" potato products in retail establishments; (4) the difficulty in informing consumers of the use/presence of sulfiting agents on "fresh" potatoes in food service establishments; and (5) the apparent lack of a consensus in the scientific community that the use of sulfites on "fresh" potatoes that are unpackaged and unlabeled is safe.

FDA excluded those types of potatoes that are presented to the consumer in a packaged and labeled form from its action with respect to "fresh" potatoes because the agency believes that individuals who are sulfite sensitive can avoid inadvertent exposure to sulfites by reading the ingredient list on the label of these products. However, in certain settings, for example, in restaurants, foods are presented to the consumer unlabeled. Therefore, the agency is concerned that there be some way to ensure that the consumers are aware that a particular potato product may be sulfited.

The agency believes that by making associations with labeled foods, sensitive individuals, when they are in settings in which the food is not normally labeled, can recognize that a particular food may be sulfited and avoid that food. For example, a sulfite-sensitive consumer can ask restaurant personnel as to whether a potato product, as purchased by the restaurant, was canned, frozen, dehydrated, or fresh. If the response describes the type of potato product the restaurant used, and that type of product is sold in retail stores in a packaged and labeled form, the sulfite-sensitive consumer will have a good idea as to whether he/she can safely eat the food.

The agency has determined that the sulfite-sensitive consumer cannot consistently determine whether "fresh" potato products contain sulfites because the term " 'fresh' potatoes" could mean that the restaurant prepares meals from whole, intact potatoes without sulfites or from precut potatoes containing sulfites. Moreover, there is no packaged and labeled retail food store counterpart to sulfited "fresh" potatoes. Based on these factors, and the allergic-type reactions associated with sulfited "fresh" potatoes, the agency has determined that use of sulfites on "fresh" potatoes is not GRAS.

For canned and dehydrated potatoes, because they are available labeled and packaged at the retail level, the agency has determined that it is possible for the consumer to develop an association between these types of products and the fact that they likely contain sulfites. Thus, FDA proposed to affirm as GRAS the use of sulfites on these types of potatoes in the **Federal Register** of December 19, 1988 (53 FR 51065).

However, the picture is not as clear with frozen potato products. The evidence available to the agency suggests that it may not be possible for the sulfite-sensitive consumer to make this association for frozen potato products.

The agency received one comment in response to its December 10, 1987, proposal from a national trade association that has among its membership processors of frozen potatoes who produce 80 percent of the total frozen potato products produced in the United States. This comment stated that the association's members do not use sulfites to any significant extent in frozen potato products. This comment also stated that many members do not employ sulfites in frozen potato products at all, and that withdrawal of the GRAS status of all sulfiting agents from all frozen potato products would exert a negligible economic effect on its members.

This comment causes the agency some concern because it raises doubt about whether sulfite-sensitive individuals can learn of the likely presence of sulfites on frozen potatoes by reading ingredient lists on packages of this type of product. As discussed above, the agency believes that the knowledge gained by reading such ingredient lists could help make sulfite-sensitive consumers aware, when they are in settings in which foods are not ordinarily labeled, such as in restaurants, that certain foods are likely to contain sulfites. On the other hand, if frozen potatoes are not consistently sulfited, and thus the presence of sulfites is not consistently declared on the label, the sulfite-sensitive consumer cannot gain the knowledge that could help him/her in a restaurant setting. As a result, the agency believes that there is a sufficient basis to question whether the use of sulfites on unlabeled and unpackaged frozen potato products is GRAS. As explained below, the agency is requesting specific information to help clarify this issue.

Furthermore, the ad hoc Advisory Committee on Hypersensitivity to Food Constituents (Advisory Committee) stated "that [the frozen potato] industry does not need sulfites and does not currently use sulfites in frozen potatoes." Formation of the Advisory Committee, to function under FDA's Center for Food Safety and Applied Nutrition, was announced by the Secretary of the Department of Health and Human Services in the **Federal**

Register of April 16, 1984 (49 FR 15021). The Advisory Committee reviewed and evaluated information and data relevant to the allergic-type responses in humans that were associated with food ingredients, including sulfiting agents, for the purpose of making appropriate recommendations to the Commissioner of Food and Drugs. The Advisory Committee met on December 12 and 13, 1985, to review specifically the available information on the use of sulfiting agents in food. With respect to frozen potato products, the Advisory Committee stated that "sulfites are not necessary in frozen potatoes" and voted unanimously to "advocate a continued exclusion of sulfites * * * from these products."

In the **Federal Register** of December 19, 1988 (53 FR 51065), FDA proposed to affirm, with specific limitations, that a variety of food uses of sulfiting agents are GRAS. Included among these uses was the use of sulfiting agents on canned, dehydrated, and frozen potatoes. The comment period for this proposal closed on June 19, 1989 (*See* 54 FR 7783; February 23, 1989). To date, the agency has not received any information addressing the use of sulfites on frozen potatoes as comments to this proposal.

The comment from the trade association and the observations from the Advisory Committee regarding frozen potato products make unclear the extent of use of sulfites on frozen potato products. Therefore, in an attempt to clarify the issue of the use of sulfites on frozen potato products, the agency is requesting data on the extent of the use of sulfiting agents on frozen potato products. The agency is also requesting data on the levels of use of sulfiting agents on frozen potato products, methods of treatment, purpose for treatment, and the safety of this use. Additionally, the agency is requesting data on the economic impact of discontinuing this use. Upon receipt of these data, the agency will review the data, and all other available data, and decide what further regulatory action to take with respect to the GRAS status of the use of sulfites on frozen potato products, including a determination that this use of sulfites is not GRAS. FDA will announce its decision in the final rule in the rulemaking initiated by the proposal of December 19, 1988 (53 FR 51065).

The requested data should be submitted on or before May 14, 1990, to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. The requested data should be identified with the docket number found in the brackets in the heading of this document. Submitted data may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 8, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services

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federal register

Thursday
March 15, 1990

Part III

Department of Commerce

Office of the Under Secretary for Economic Affairs

Final Guidelines for Considering Whether or Not a Statistical Adjustment of the 1990 Decennial Census of Population and Housing Should Be Made for Coverage Deficiencies Resulting in an Overcount or Undercount of the Population; Notice

DEPARTMENT OF COMMERCE

[Docket No. 91282-0068]

Office of the Under Secretary for Economic Affairs

Final Guidelines for Considering Whether or Not a Statistical Adjustment of the 1990 Decennial Census of Population and Housing Should Be Made for Coverage Deficiencies Resulting in an Overcount or Undercount of the Population

AGENCY: Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce.

ACTION: Final notice.

SUMMARY: These Final guidelines are published pursuant to the Stipulation and Order agreed to by the Federal Government and the City of New York and others in the case of City of New York et al. v. Department of Commerce, et al. Docket No. 88 Civ. 3474 (U.S. Dist. Ct., EDNY filed November 3, 1988) (The "Stipulation"). The purpose of this notice is to inform the public about these final guidelines.

On Monday, December 11, 1989, the U.S. Department of Commerce published proposed guidelines in the **Federal Register** (FR Vol. 54, No. 236, part XI pp. 51002–51005). This notice requested comments from the widest possible audience and set the due date of January 25, 1990 for receipt of comments. On January 24, 1990, a second notice was announced in the **Federal Register** (FR Vol. 55, No. 16, p. 2397), extending the last date for comments to February 2, 1990.

EFFECTIVE DATE: March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Mark W. Plant, Deputy Under Secretary for Economic Affairs, U.S. Department of Commerce, Room 4848, Herbert C. Hoover Building, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Paragraph 4 of the Stipulation provides, in part, that "* * * the Department will promptly develop and adopt guidelines articulating what defendants [Department of Commerce] believe are the relevant technical and nontechnical statistical and policy grounds for decision on whether to adjust the 1990 Decennial population counts."

Paragraph 4 of the Stipulation goes on to state that the Department's proposed guidelines shall be published in the **Federal Register** by December 10, 1989, with a request for comments, and then published in final form in the **Federal Register** by March 10, 1990. Because December 10, 1989, fell on a Sunday, the publication in the **Federal Register** of the proposed guidelines occurred on Monday, December 11, 1989.

Paragraph 5 of the Stipulation and Order states that the "Defendants [Department of Commerce] shall determine whether an adjustment satisfies the guidelines specified in para. 4 hereof [above]. If the Secretary determines to make an adjustment, defendants [Department of Commerce] shall publish corrected 1990 Decennial Census population data at the earliest practicable date and in all events, not later than July 15, 1991."

Paragraph 5 of the Stipulation and Order goes on to state that "If the Secretary determines not to make an adjustment, defendants [Department of Commerce] shall publish at the earliest practicable date and, in all events, not later than July 15, 1991, a detailed statement of its grounds, including a detailed statement of which guidelines in para. 4 above were not met and in what respects such guidelines were not met."

Copies of all comments received pursuant to the request for comments were made and are available for public inspection in the Department's Central Reference Records and Inspection Facility, Room 6628 in the Hoover Building.

One hundred fifty-six (156) letters were received commenting on the proposed guidelines. There were responses from thirty-six (36) States, eight (8) Cities, sixteen (16) private individuals (including four [4] members of the Secretary's Special Advisory Panel), seventy-eight (78) members of the U.S. House of Representatives, three (3) members of the U.S. Senate, seven (7) Governors of the States, nine (9) interest groups, two (2) Federal agencies, and seventy-four (74) members of State legislatures representing thirty-six (36) States. We also received comments orally from attorneys representing plaintiffs in the lawsuit cited in the "**SUMMARY**" during a meeting at the Department of Commerce on March 6, 1990. The comments made during this meeting are included in the administrative record, and are available for public inspection in Room 6628 of the Hoover Building.

Among the total responses were seventy-six (76) expressions of support for the complete set of proposed guidelines, four hundred and forty-nine (449) expressions of specific support for specific guidelines, sixty-five (65) expressions of disapproval of the entire set of proposed guidelines, five hundred and forty-seven (547) expressions of disapproval for specific proposed guidelines, and one hundred sixty-seven (167) comments on specific proposed guidelines which expressed neither approval nor disapproval.

Thirty (30) commentators asserted that there should be no adjustment of the Census enumeration regardless of the circumstances; two (2) commentators expressed the opinion that the Census enumeration should be adjusted under any circumstances.

Dated: March 12, 1990.

Michael R. Darby,

Under Secretary for Economic Affairs.

Introduction

Article I, *Section 2*, Clause 3, of the Constitution of the United States reads, in part:

> Representatives and direct Taxes shall be apportioned among the several States which may be included within the Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

Amendment 14, *Section 2*, to the Constitution, reads in part:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

The orderly redistribution of political representation, which in the ordinary course of events means transfer of political power, is effected on the basis of the decennial census. The decision on whether to adjust the 1990 census for net undercounts or net overcounts has substantial consequences. Whatever decision is made, it will affect the nation for at least the next ten years. It is not a simple technical decision: It is a momentous decision which will be made by the Secretary of Commerce, an official appointed by the President and confirmed by the Senate.

The basic decision the Secretary will face is whether the counts are made more accurate by adjustment or whether an adjustment would introduce more error into the census counts. He must also take account of other implications of his decision on the public. These guidelines are written to ensure that the counts produced from the 1990 census are the most accurate that can practically by produced. They are intended to provide a framework for a

balanced consideration by the Secretary as to whether to adjust the census enumeration. In that framework, the quality of the census and the degree of accuracy of the census enumeration play fundamental roles.

Enumeration is the basic procedure for counting the population that is mandated by the Constitution. Accordingly, throughout its history the Census Bureau has developed, refined, and increased the precision of the methods involved in that procedure. Those refinements and the improvements in the count that they have brought about have given us great confidence in the basic census procedure. Thus, we view enumeration as the basis for the census counts, and require that statistical techniques used to modify the counts in an attempt to improve them be subject to close scrutiny. This is not a bias against adjusting the counts for net undercount or net overcount. Rather, it is a prudent stance that requires that procedures that infer population counts be shown clearly to yield better counts, that is, counts subject to smaller errors than the enumeration procedures themselves. The true population may, in statistical theory, be inherently unknowable, but the enumeration must necessarily be considered closest to the true population count unless convincing evidence can be marshalled to show otherwise. Furthermore, this evidence must also allow us to generate better counts—it cannot just show deficiencies in the enumeration. It must enable us to correct those deficiencies.

Much of the confusion that surrounded the proposed guidelines stemmed from differing visions of the census process. The census process is divided into several distinct phases. The first phase is the enumeration of the population. The second phase is the conduct of a post-enumeration survey, based on a probability sample of housing units. This sample provides data for three purposes: evaluation of the accuracy of the enumeration, assessment of the net overcount or undercount of basic enumeration subgroups using the capture-recapture methodology and, should it prove desirable, calculation of weights for the adjustment of the enumerated counts. The third phase of the census process is a determination of the adequacy of the post-enumeration survey as an evaluation and adjustment tool.

If a determination is made that the census enumeration counts are flawed, that the post-enumeration survey is adequate and accurate, and that the application of the weights generated by the post-enumeration survey would result in more accurate counts, then the census counts could be adjusted.

For these reasons, we view the census enumeration as an operation distinct and separable from the operations used to evaluate the enumeration. We, therefore, do not subscribe to an integrated view of the census, where enumeration and evaluation are inextricably bound together to produce counts. The enumeration produces counts which are subsequently evaluated. Should the evaluation show them deficient and correctable into more accurate counts, a decision can be made to adjust. Thus, sacrificing any parts of the enumeration and replacing them with evaluation activities is not appropriate. It is from this view of the census that the guidelines are drawn.

It is worth noting that the technical grounds for adjustment are contained in these guidelines in a manner that is intended to be understandable to the general public. The level of detail that some members of the public would desire is greater judging from the comments on the proposed guidelines. In consideration of this desire, the Department of Commerce will publish a detailed outline of technical operations and procedures. The Department of Commerce and the Bureau of the Census will keep the public informed as plans for implementing the procedures leading to an adjustment decision progress.

The guidelines will be weighed collectively. Not every consideration in each guideline need be completely satisfied or resolved in order to reach a decision. The issues of accuracy, fairness, disruption, and constitutionality must be addressed together in making the decision on whether an adjustment will increase the accuracy of the 1990 Census sufficiently to proceed with it.

The Department of Commerce will rely on the Bureau of the Census to implement the technical operations and procedures used in the decisionmaking process. These include operations to evaluate the accuracy of the census enumeration and the proposed adjustments to the census enumeration, the reliability of statistical models used in the adjustment process and the quality of the resulting estimates. The Bureau of the Census will use the highest levels of professional standards in carrying out these operations, procedures and evaluations, and will document all their judgments in a way that allows the statistical community to evaluate them. Ultimately, however, the Secretary will, in the exercise of his sound discretion, determine whether to adjust the census.

Each of the following guidelines is accompanied by an explanation or example of its intent. Where appropriate, a brief description of the empirical information and technical operations bearing upon it is presented.

A treatment of substantive comments on the proposed guidelines is then presented. Favorable and unfavorable comments on each proposed guideline are both presented, followed by a summary analysis of the comments. Each substantive objection to each guideline is addressed individually. General comments on the proposed guidelines are presented and addressed last.

Guidelines

[1] The Census shall be considered the most accurate count of the population of the United States, at the national, state, and local level, unless an adjusted count is shown to be more accurate. The criteria for accuracy shall follow accepted statistical practice and shall require the highest level of professional judgment from the Bureau of the Census. No statistical or inferential procedure may be used as a substitute for the Census. Such procedures may only be used as supplements to the Census.

Explanation: The mandate of the Census Bureau is to enumerate the population in a manner that assures that the count of the population is the best achievable given current methodology. As stated in the introduction, the assertion that a method involving statistical inference could lead to a more accurate enumeration warrants close scrutiny.

A set of adjusted counts would be based on a statistical inference that unaccounted for persons were present and that persons who were actually enumerated do not exist or were counted twice. Both determinations are based on a survey of a sample of similar blocks from locations across the country. Thus, the evidence, to be acceptable, must show convincingly that the count can be improved by statistical adjustment at national, state and local levels. In making this assessment, we will examine the effects of the proposed adjustment on the accuracy of counts at all geographic levels.

Comparison of estimates of population size. The estimates of the size of the population from the original enumeration, the demographic analysis, and the post-enumeration-survey estimates will be compared to assess their consistency. The comparison will take into consideration the uncertainty

inherent in the demographic analysis and post-enumeration-survey estimates. For the reasons explained in the introduction, the original enumerations will be considered to be more accurate for all geographic areas unless the evidence from demographic analysis and the post-enumeration survey demonstrates convincingly that the dual-system estimate is more accurate.

Accordingly, the Bureau of the Census shall carefully scrutinize and fully describe the size of any net undercount or net overcount inferred from demographic analyses of population sub-groups and the sources of any net undercount or net overcount of population subgroups inferred from the analysis of the post-enumeration survey.

Discussion of Technical Grounds

Demographic Analysis. Estimates of the size of certain cohorts of the population are based on assumptions about or studies of the behavior of those populations. For some cohorts these assumptions have led to conclusions of net undercounts or net overcounts in several different censuses. The extent to which such conclusions result from specific assumptions will be described. Moreover, the extent to which these assumptions are warranted, and the sensitivity of such conclusions to changes in these assumptions, will be assessed. The potential sources or error in the demographic analyses the Bureau currently plans are:

Birth registration completeness.
Net immigration of undocumented aliens.
White births, 1915–1935.
Black births, 1915–1935.
Foreign-born emigrants.
Population over age 65.
Models to translate historical birth-record racial classifications into 1990 self-reported census concepts.

The Bureau will examine the effect of errors in each of these measurements on estimates of the net overcount or net undercount. These studies will yield ranges of uncertainty for the demographic estimates of the population which will in turn yield ranges of uncertainty for the net overcount or net undercount. The effect of uncertainty in each of these components will be cumulated into overall levels of potential error.

Post-Enumeration Survey. The capture-recapture method lies at the heart of the post-enumeration-survey models for estimating population coverage deficiencies. The use of this methodology to derive the net undercount or net overcount estimates will be clearly explained. The appropriateness of this methodology to the enumeration of the population will be assessed.

Like demographic analysis, the post-enumeration-survey adjustment mechanism relies on numerous assumptions. The extent to which these assumptions are warranted, and the sensitivity of the conclusions to changes in these assumptions, will be assessed.

Survey methods are based on randomly chosen samples that use statistical inference to estimate the population of the Nation and its components. Such estimates are subject to statistical variation within some range of values—that is, a replication of the process used to make the estimate (including taking the sample) may not lead to the same estimate as the original procedures. Thus, there is a likely range of estimates around the "true" count of the population that depends on the random sample chosen.

If the range of estimates likely to occur is small and near the "truth," then any particular estimate is close to the truth and, thus, acceptable as an approximation of the "truth." If the range is very large, then any particular estimate may not be close to the "truth," and the estimation process gives us little information about the "truth."

A relevant technical criterion related to uncertainty introduced by sampling is how small any possible range of dual-system estimates must be to conclude that any particular outcome of the dual-system estimation process is more accurate than the enumeration itself.

Because the post-enumeration survey itself is a sample, the quantified parameters of the deficiencies are themselves estimates and subject to statistical variability. This variability must be small enough to ensure that any modification of the enumeration is an improvement over the unadjusted counts.

The post-enumeration survey serves two functions. The first function is to detect any deficiencies in the enumeration. For the post-enumeration survey to show convincingly that the enumeration is deficient, it must be clear that the deficiencies are not a result of problems in taking the post-enumeration survey. It follows, then, that the quality of the post-enumeration survey is a central concern in the decision whether to adjust.

The second function is to quantify any deficiencies attributed to the enumeration precisely enough to allow the enumeration to be modified in such a way that we are reasonably certain that the modified enumeration is more accurate than the original enumeration. Thus the post-enumeration survey must quantify the deficiencies of the enumeration precisely and accurately.

How much uncertainty in the measures of deficiency of the enumeration is acceptable?

(1) If the likely range of measures of deficiency would include outcomes that would call for no modification in the enumeration, then no modification would be done.

(2) The enumeration could be modified if the likely range of measures of deficiency would lead to potential modifications that would be substantially similar in terms of their impact on the counts of demographic groups, their impact on apportionment of Congress, and their impact on local population counts.

The quality of the net overcount or net undercount estimates that result from the post-enumeration survey depends on the quality of a series of operations used to gather and process the required data. The Bureau of the Census will undertake a series of studies to assess the statistical quality of the post-enumeration survey data. The results of these studies will yield measures of the precision and accuracy of the net overcount and net undercount estimates and a range of estimates for the net undercount and net overcount.

The current plans of the Bureau include investigation of the following sources of error for the dual system estimate of population size based on the post-enumeration survey and the census:

Missing data
Quality of the reported census day address
Fabrication in the P sample
Matching error
Measurement of erroneous enumerations
Balancing the estimates of gross overcount and gross undercount
Correlation bias
Random error

These and other component errors will be combined to produce an estimate of the overall level of error. In all evaluations, analyses will examine data for the population as a whole and for race, sex, Hispanic origin, and geographical detail.

[2] The 1990 Census may be adjusted if the adjusted counts are consistent and complete across all jurisdiction levels: national, state, local, and census block. The resulting counts must be of sufficient quality and level of detail to be usable for Congressional reapportionment and legislative redistricting, and for all other purposes and at all levels for which census counts are published.

Explanation: This guideline acknowledges that the population

counts must be usable for all purposes for which the Census Bureau publishes data. The guideline also reinforces the fact that there can be, for the population at all geographic levels at any one point in time, only one set of official government population figures.

Thus, the level of detail must be adequate to produce counts for all such purposes. If the 1990 Census count is to be adjusted, it must be adjusted down to the census block level. It must be arithmetically consistent to eliminate confusion, and to prevent any efforts to choose among alternative sets of numbers to suit a particular purpose.

If the Census is to be adjusted, a process called synthetic adjustment will be used. A synthetic adjustment assumes that the probability of being missed by the census is constant for each person within an age, race, Hispanic origin, sex, and tenure category in a geographical area. A synthetic adjustment is performed in two steps. First, the preferred adjustment factors are estimated for a variety of post strata defined by age, race, Hispanic origin, sex and tenure within geographic areas. Then the adjusted estimate in each category for a census block is obtained by multiplying the unadjusted census estimate in that category by the adjustment factor. The adjusted census estimate for the census block is computed by adding the estimated adjustments for each post strata cell of the block. Put simply, in an adjusted population count each individual enumerated will receive a relative weight according to his or her race, age, sex, ethnic background, tenure, and place of residence. The aggregate counts will then be built up from the weighted individuals to census block, local area, state and national counts. We will conduct evaluations of small area estimations to ensure that this process results in counts that are in fact more accurate.

Evaluations of small area estimation. Coverage error may vary substantially within the post-enumeration-survey post-strata, although the post-strata were drawn to be homogeneous with respect to expected coverage error. The goal of this analysis is to determine whether or not the assumptions underlying a synthetic adjustment of the census are valid and produce counts which are more accurate at all geographic levels at which census data are used. In particular, the within-strata block-to-block variance in characteristics and net overcounts or net undercounts will be analyzed.

[3] The 1990 census may be adjusted if the estimates generated from the pre-specified procedures that will lead to an adjustment decision are shown to be more accurate than the census enumeration. In particular, these estimates must be shown to be robust to variations in reasonable alternatives to the production procedures, and to variations in the statistical models used to generate the adjusted figures.

Explanation: The Bureau of the Census will determine the technical and operational procedures necessary for an adjustment decision before the results of the post-enumeration survey are known. This procedure shall be chosen to yield the most accurate adjusted counts that pre-census knowledge and judgment can provide. The Bureau of the Census will then assess the components of systematic and random error in the procedure and it will assess the robustness of the estimates generated from the procedure.

Various procedures and statistical models can be used to generate estimates of net overcounts or net undercounts and adjustment factors. This guideline specifies that a set of procedures for generating proposed adjusted counts will be determined in advance of receiving the 1990 post-enumeration-survey estimates. This guideline requires that these procedures be evaluated. These evaluations will identify other procedures and models that could be considered as reasonable alternatives to the chosen production process. These alternatives will be used to assess the accuracy and precision of the proposed adjusted counts. In addition they will be used to assess whether and by how much the adjusted counts could vary if alternative procedures were used.

[4] The decision whether or not to adjust the 1990 census should take into account the effects such a decision might have on future census efforts.

Explanation: The Decennial Census is an integral part of our democratic process. Participation in the census must be encouraged. Respect for the objectivity, accuracy, and confidentiality of the census process must be maintained. Accordingly, if evidence suggests that adjustment would erode public confidence in the census or call into question the necessity of the population participating in future censuses, then that would weigh against adjustment. On the other hand, if evidence suggests that the failure to adjust would erode public confidence in the census and thus result in widespread disinclination to participate in future censuses, that would argue for adjustment. The extent to which adjustment or non-adjustment would be perceived as a politically motivated act, and thus would undermine the integrity of the census, should also be weighed in making any adjustment decision.

[5] Any adjustment of the 1990 Census may not violate the United States Constitution of Federal statutes.

If an adjustment would violate Article I, Section 2, Clause 3 of the U.S. Constitution, as amended by Amendment 14, section 2, or 13 U.S.C. section 195, or any other Constitutional provision, statute or later enacted legislation, it cannot be carried out.

[6] There will be a determination whether to adjust the 1990 census when sufficient data are available, and when analysis of the data is complete enough to make such a determination. If sufficient data and analysis of the data are not available in time to publish adjusted counts by July 15, 1991, a determination will be made not to adjust the 1990 census.

Explanation: It is inappropriate to decide to adjust without sufficient data and analysis. The Bureau will make every effort to ensure that such data are available and that their analysis is complete in time for the Secretary to decide to adjust and to publish adjusted data at the earliest practicable date and, in all events, not later than July 15, 1991, as agreed to in the stipulation. Note, however, that the Department and the Bureau have consistently stated that this is the earliest possible date by which there is a 50 percent chance that an analysis could be completed on which a decision to adjust could be based. If, however, sufficient data and analysis of the data are not available in time, a determination will be made not to adjust the 1990 Census. The coverage evaluation research program will continue until all technical operations and evaluation studies are completed. Any decisions whether to adjust other data series will be made after completion of those operations.

[7] The decision whether or not to adjust the 1990 Census shall take into account the potential disruption of the process of the orderly transfer of political representation likely to be caused by either course of action.

Explanation: This guideline is intended to ensure that the factor of disruption of the process of the orderly transfer of political representation is explicitly taken into account as the decision is reached. For example, many states have pointed to adjustment as being disruptive to the redistricting plans. Likewise, members of some communities that are believed to have been historically undercounted contend that if the Census were not adjusted, this would disrupt the orderly and

proper transfer of political representation to their communities. The inability to ensure accuracy of counts at local levels may result in politically disruptive challenges by localities to official census counts.

This guideline recognizes that the Decennial Census plays a pivotal role in the orderly redistribution of political representation in our democratic republic. The process used to generate the required counts must not be arbitrary either in fact or appearance. The Secretary is thus obliged to consider the impact of his decision on the fairness and reasonableness of that redistribution to all those affected. This guideline requires an explicit statement of how and to what degree adjustment or non-adjustment would be disruptive. Even though these are concepts that are not easily quantifiable, they warrant serious consideration in order for the Secretary to make a prudent decision on an issue that profoundly affects public policy.

[8] The ability to articulate clearly the basis and implications of the decision whether or not to adjust shall be a factor in the decision. The general rationale for the decision will be clearly stated. The technical documentation lying behind the adjustment decision shall be in keeping with professional standards of the statistical community.

Explanation: It is the responsibility of the government to have its critical decisions understood by its citizens. We recognize, however, that the degree to which a decision can be understood cannot alone dictate an important policy decision.

The decennial census is a public ceremony in which all usual residents of the United States are required to participate. If the census count were statistically adjusted, the rationale for the action must be clearly stated and should be understandable to the general public. If the decision were made not to adjust, the elements of the decision must also be clearly stated in an understandable way. It will be the responsibility of the Department of Commerce and the Bureau of the Census to articulate the general rationale and implications of the decision in a way that is understandable to the general public.

This does not require the Bureau or the Department to explain in detail to the general public the complex statistical operations or inferences that could lead to a decision to adjust. But, as with any significant change in statistical policy, the government has the duty to explain to the public, in terms that most can understand, the reason for the change. If the decision is not to adjust (that is not to change) the public will be informed as well.

The last part of the guideline ensures that the methods, assumptions, computer programs, and data used to prepare population estimates and adjustment factors will be fully documented. The documentation will be sufficiently complete for an independent reviewer to reproduce the estimates. These standards apply to the post-enumeration survey estimates, the demographic analysis estimates, and the small area synthetic estimates.

Treatment of Substantive Comments on the Proposed Guidelines

There was considerable variation among the comments on the proposed guidelines. Therefore, all substantive objections to each proposed guideline is discussed. Each guideline is treated in turn. There are five parts to the analysis of each guideline. First, the proposed guideline and explanation is restated as it appeared in the **Federal Register**. Second, comments that support the guideline follow. Third, comments that raise substantive objections are presented. Fourth, an overall analysis of comments on the guideline is presented. Fifth, each substantive objection to the guideline is addressed.

After the comments on each of the twelve proposed guidelines are presented and analyzed, general substantive comments not specifically related to a particular guideline are presented. Generally supportive comments are followed by comments that raised substantive objections. Finally, a response to each substantive objection is presented.

Because the numbering of the guidelines changed from the proposed guidelines, the following convention is adopted. When a comment or response refers by number to a proposed guideline, the guideline is referred to as "proposed guideline" and the words are presented in lower case and regular type. When a response refers to a final **GUIDELINE**, the guideline is referred to as "final **GUIDELINE**" and is presented in upper case, bold type and underlined.

Proposed Guideline 1

[1] The Census shall be considered the best count of the population of the United States unless an ajusted count is shown to be more accurate, within acceptable margins of statistical error, at the national, state, local, and census block levels.

Explanation: The constitutional mandate of the Census Bureau is to enumerate the population, and the investment it makes in decennial census operations is to assure that the count is the best count of the population achievable given current metholodogy. The census is a standard. Other data collection activities are compared to census results to assess their quality. In the past, no sample survey has had as complete coverage as the decennial census, and no coverage measurement survey has produced data of better quality than the census. Strengths and weaknesses of the census are well known and extensively documented. The census is understood and because of its quality has wide acceptance and extensive use among policy makers and other users. Before replacing the census, we must be sure than the replacement is an improvement. The assumption that any effort involving less than an attempt to enumerate the entire population can lead to a more accurate enumeration calls into question the process the Census Bureau has developed over the past two hundred years. The enumeration is based on evidence that physical persons are in a particular location or block at a particular time. A set of adjusted counts would be based on a statistical inference that unaccounted for persons were present and that persons who were actually enumerated do not exist or were counted twice. Both determinations are based on a survey of a sample of similar blocks from locations across the country. To reiterate, there is no reason to adjust the census unless the adjusted count is shown to be better for all the uses to which census counts are put. Thus, the evidence to be acceptable must show overwhelmingly that the count can be improved by statistical adjustment in order to overturn the premise that the actual enumeration is the best count possible.

Comparison of estimates of population size. The estimates of the size of the population from the original enumeration, the demographic analysis, and the post-enumeration-survey estimates will be compared to assess their consistency. The comparison will take into consideration the uncertainty inherent in the demographic analysis and post-enumeration-survey estimates. The original enumerations will be considered to be more accurate for all geograhpic areas unless contrary evidence is presented.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) One of the strengths of the present guidelines is the clear distinction they make between the nature of the Census enumeration and the nature of estimates involving the Post-Enumeration Survey or demographic analysis. The

enumeration is different in kind from these others sorts of estimates. For the enumeration, each tally corresponds in principle to a particular person. For a set of estimates, there is no direct correspondence between terms in the count and particular persons. There can of course be evidence that an enumeration is fraught with error and there can be evidence that the inferences behind a set of estimates are soundly based. Proposed guideline 1 also recognizes this point clearly, and seems to be an even-handed account.

(2) This proposed guideline appropriately takes into consideration the policy question of whether or not an adjustment should be made, and is consistent with the "one man; one vote" principle. A vigorous effort should be made to count every individual residing within our borders. However, it is unacceptable to make a substantial upwards adjustment affecting specific congressional districts based on across-the-board statistical assumptions. The assumptions are just that, assumptions. There are grave objections to going ahead with an adjustment that has no relevance to any specific area of the country.

(3) Conventional wisdom that a census by enumeration is a method far superior in scope and accuracy to a theoretical statistical model is correct and should be supported.

(4) The procedures of the census should not be changed without clear and convincing evidence that an adjustment would improve the accuracy of the census. A substantial and clearly evident improvement should be a minimum before tampering with any numbers.

(5) Any tampering with the census will undoubtedly tie up the federal congress and state legislatures in court for who knows how long, since any "adjusted" figures will definitely be challenged in court.

(6) Since the numbers serve as the basis for all reapportionment and redistricting efforts, one must seriously question whether or not the principle of one person-one vote can ever be achieved if the numbers are altered.

(7) The Secretary should have to justify advantages of adding persons who do not exist and removing any person actually counted along with a different relative weight in the adjusted count based upon ethnic background, etc. Specific detail on any adjustment should also be required in order to not only authenticate the adjustment but to give the necessary detail for the minute detail necessary to stay within court approved guidelines.

(8) Since the census has been the standard for many decades, the pro-adjustment advocates should be required to prove specifically where the census is wrong and how any adjustment would be more accurate.

(9) Initially, although the issue is obviously moot at this point, it should be pointed out that even the mere consideration of undertaking a formalized analysis of whether technical and nontechnical statistical means should be used to alter the actual enumeration of the census is wrong.

(10) If the United States is going to change the method by which it makes its decennial determination of population, such should be initiated through a change in the Constitution which mandates an actual enumeration. Even if the current procedure can be statistically proven to be inadequate, at least it has been consistently statistically inadequate for 200 years. If we use a statistical model to change our actual enumeration this time, will the same exact statistical model be appropriate in the year 2000 or 2010? If not, we will have embarked upon a procedure which will continue to change the method of determining our population with each successive census, and will thus erode the public confidence that the census is not subject to political manipulation.

(11) It is clear that the Constitution mandates that the decennial enumeration be used for reapportionment purposes. It does not seem logical, therefore, that a series of often conflicting statistical estimates be used as a justification to change the actual enumeration results, and that those changed figures be labelled the "official" census results.

(12) The United States Constitution calls for an "Actual Enumeration" of the population not a near estimate. Considering the Constitutional mandate the proponents of an "adjusted count" have the burden of proving that any "adjusted count" is more accurate. The standard of proof must be equal to any standard which seeks to derogate a Constitutional mandate.

(13) Proponents of an adjustment cannot seek an adjustment based upon inferences or assumptions. Any adjustment must meet the same Constitutional standard of an "actual enumeration".

(14) Any attempt to adjust the decennial survey must meet the same standard as the decennial enumeration. At the most any post-enumeration survey is simply an informational device and can be used at the most as a tool for developing better methods and techniques, but not as an adjustment to the decennial enumeration.

(15) The 1990 census should be adjusted only if the adjusted counts are consistent and complete across all jurisdictional levels: National, state, local and census block. This would prohibit the adjustment of census counts at the state level without the same adjustments at the census block level.

(16) The Department has correctly focused its attention in proposed guideline 1 on the policy question of whether a post-census adjustment should be done in the first place as opposed to merely how an adjustment could be performed. In the past, enumeration efforts of the Census Department within Illinois have been conducted with accuracy, and there is no reason to adjust the census for a hypothetical undercount. There is no reason to adjust the census unless the adjusted count is shown to be better for all uses to which the census counts are put. It is believed that rigorous enumeration efforts of the Department would result in a more accurate census count without the application of statistical theories to alter such counts. A person-by-person enumeration is so vastly superior to statistical theories that the count should not be adjusted unless evidence shows beyond a reasonable doubt that the adjustment will improve the accuracy of the count.

(17) The last phrase of this guideline should read "* * * error at all levels of data, national, state, local and census block." This makes this proposed guideline more consistent with proposed guideline 4.

(18) The Census has a 200 year history of statistical integrity and political impartiality. We should be very reluctant to imperil that record. Therefore, as stated in the explanation of the first proposed guideline, the evidence must show overwhelmingly that the count can be improved by statistical adjustment in order to overturn the premise that the actual enumeration is the best count possible. Simply stated, unless we are totally sure, we shouldn't use it.

(19) The possibility that an adjustment might sacrifice accuracy for an unknown possible improvement must be discouraged. There is also disagreement over which adjustment procedure is the most accurate. This disagreement invites political influence and manipulation as determinants in the selection of adjustment procedure.

Comments on this proposed guideline raised the following substantive objections:

(1) While an unadjusted census may well be the most accurate count available, a fair evaluation of adjustment methodology should not begin with the strong presumptions against the merits of the procedure.

(2) This proposed guideline should recognize that the primary role of the census is to ensure equal representation in the House of Representatives. Contrary to this, this proposed guideline requires that adjusted data be better for all the uses to which the census is put.

(3) The premise spelled out in this proposed guideline that "the actual enumeration is the best count possible" cannot be sustained because "statistical corrections based on the post-enumeration survey are not fundamentally different from other census operations."

(4) This proposed guideline should indicate whether correction will be precluded by a showing that accuracy has not been increased for one particular geographic unit or whether a demonstration of greater accuracy will suffice.

(5) The Constitution "demands the most accurate counts." The proposed guideline's requirement of accuracy down to the block level is inconsistent with the Constitutional requirement.

(6) This proposed guideline should state that statistical corrections, like any other program or technique, should be included in the census if it makes the count more accurate.

(7) The explanation of this proposed guideline erroneously asserts that there is some fundamental distinction between the bundle of programs and techniques that historically have constituted the census and statistical corrections.

(8) The proposed guideline's claim that a statistically corrected census is somehow fundamentally different from the initial population estimate cannot withstand analysis.

(9) Statistical corrections cannot be distinguished from all other census operations because both make use a statistical inference.

(10) Statistical correction is no different from other inferential methods used in the past by the Bureau to improve the accuracy of the count. Two examples of such methods used in the 1970 census are the National Vacancy Check and the Post-Enumeration Post Office check. Another example which has been used in previous censuses, and which will also be used in 1990, is imputation. Thus, statistical correction based on the post-enumeration survey is not fundamentally different from other census operations. Accordingly, statistical correction should not have more stringent standards than applied to other census operations.

(11) The inclusion of the words "within acceptable margins of statistical error" provides no guidance as to what degree of statistical accuracy will be considered sufficient to demonstrate the greater accuracy of corrected counts. The proposed guideline does not identify what constitutes an acceptable margin of error. No ground for ultimate decision is provided.

(12) The words "shown to be" in the proposed guidelines are objectionable because they are "far too strong" unless used in a statistical way.

(13) The proposed guideline states incorrectly that the adjustment count must be better for all the uses to which census counts are put.

(14) This proposed guideline unreasonably requires improvement in all 8 million census blocks.

(15) The word "overwhelming" in the thirteenth sentence of the explanation of this proposed guideline is too one-sided.

(16) The word "assumption" in the eighth sentence of the explanation is misleading.

(17) This proposed guideline incorrectly sets up the traditional enumeration as a standard and should be rewritten.

(18) The following new guideline should be substituted: "Guideline [1]. The census shall be considered the best count of the population of the United States unless an adjusted count is shown to be more accurate. An adjusted count would be considered more accurate if either:

(i) Evidence from the post-enumeration survey and from demographic analysis suggests that there is at least a ninety percent chance that there was a net undercount of the national population in the census, taking into consideration plausible alternative assumptions for sources of error in estimation; or

(ii) Evidence from the post-enumeration survey and from demographic analysis suggests that there is at least a ninety percent chance that there was a differential undercount rate between the black population and the non-black population, or a differential undercount rate between the Hispanic population and the non-Hispanic population, taking into consideration plausible alternative assumptions for sources of error in estimation; or

(iii) Evidence from the post-enumeration survey and from demographic analysis suggests that there is at least a ninety percent chance that at least five states would consistently receive fewer Congressional seats using the census counts than they would using the adjusted counts, taking into consideration plausible alternative assumptions for sources of error in estimation."

(19) Change the word "overwhelmingly" to "convincingly" in the last sentence of the first paragraph of the explanation, because "overwhelmingly" conveys too strong a presumption against adjustment. As such, it could be interpreted as indicating a partisan bias against adjustment.

(20) Criteria for adjustment should be what is technically feasible rather than historic achievement and the absence of any competitive survey efforts.

(21) This proposed guideline "should state that we want to be confident that the adjustment will improve the data."

(22) The following new guideline should be substituted: "The census should use a statistical adjustment if it is shown to make the count more accurate. In making the determination emphasis should be placed on the Census Bureau's [C]onstitutional obligation to count all persons as well as the historic undercount of population groups, including Hispanics, minorities, and undocumented residents."

(23) The proposed guideline is misleading. A more accurate statement than "The Census" would be "The attempted enumeration."

(24) The following new guideline should be substituted: "The purpose of deciding whether or not to adjust the results of the classical enumeration is to bring the Census results as close to the truth as possible."

(25) The following new guideline was suggested: "The Bureau, and the members of the Secretary's Special Panel, will report to the Secretary, before July 15, 1991, on the strength of the evidence indicating which of the unadjusted classical enumeration, or of that enumeration adjusted in the light of the Post-enumeration Survey, has a generally larger error, or more importantly, which one has a generally more intolerable error, the latter assessed in view of the cardinal importance of population ratios and the relative unimportance of equal percentage errors for all geographic units."

Analysis of Comments Received on Proposed Guideline 1

Proposed Guidelines 1, 1a, 1b, and 1c have been extensively revised, and combined into final **GUIDELINE 1**. The comments that were critical said that the proposed guidelines were too severe,

and were biased against any possibility of adjusting the census enumeration no matter how flawed that enumeration was. Many comments accused the Department of betraying a bias against adjustment with these proposed guidelines. Since it is the intention of the Department to be even-handed, and it was the intent of the original proposed guidelines to be even-handed, our failure to avoid such a misperception of the intent of these proposed guidelines was regrettable.

We have, therefore, modified these proposed guidelines, noting that statistical standards and professional judgment from the Bureau of the Census with respect to the adequacy of the census enumeration, and the adequacy of the analyses of that enumeration and of the post-enumeration survey and demographic analysis, shall inform the adjustment decision. As explained in the introduction to the **GUIDELINES**, the priority assigned to the census enumeration is maintained. However, a detailed presentation of the logic underlying the relationship between the census enumeration and the post-enumeration survey is incorporated into the description of the technical grounds and operations underlying **GUIDELINE 1**.

We have also made clear that the census enumeration will be assessed for adequacy, but we have continued to note that acceptable amounts of variation with respect to adjusted estimates remains a key element in that assessment. In addition, the explanation of **GUIDELINE 1** makes clear that there must be evidence that counts can be improved by adjustment at the national, state and local levels.

Each substantive objection to proposed guideline 1 will now be addressed in turn:

(1) We do not intend to make any presumption against the merits of the adjustment methodology. For the reasons explained in the **Introduction**, it is our view that the census enumeration must necessarily be considered the most accurate count of the population, unless an adjusted count is shown to be more accurate. This view is affirmed by various supporting comments, notably (1), (4) and (8).

(2) The role of the census in apportionment is a Constitutionally specified purpose. However, as described in final **GUIDELINE 2**, it is our position that all statutory uses must be met by any official census of the population, whether it has involved the use of a procedure described as adjustment or not. This view is affirmed by various supporting comments, notably (15), (16), and (17).

(3) It is our position, as we noted in (1) above, that the census enumeration must necessarily be considered the most accurate count unless proven otherwise. Whether corrections based on the post-enumeration survey are fundamentally different from other census operations is debatable. Because of the importance attached to the adjustment issue, adjustment related activities warrant close scrutiny. This view is affirmed by various supporting comments, notably (1), (4), (7), (8), (10), (11), (12), and (18).

(4) The explanation in final **GUIDELINE 1** makes clear that there must be evidence that counts can be improved by adjustment at the national, state, and local level. Showing that accuracy has not been improved for a particular geographic unit will not preclude adjustment.

(5) See comment (2) above.

(6) The first sentence of final **GUIDELINE 1** states this.

(7) See comment (3) above.

(8) See comment (3) above.

(9) It is our view that statistical corrections can be distinguished from other census operations. Comment (3) above notes the difference. See also (10) below.

(10) See (3) above. The 1970 National Vacancy Check was instituted on a sample basis as an emergency measure. In 1980 the vacancy check was done on a 100% basis. Similarly, the Post Enumeration Post Office Check was done on a sample basis in 1970 and on a 100% basis in 1980.

(11) We have changed **GUIDELINE 1** to require that the Census Bureau will follow accepted statistical practice and exercise the highest level of professional judgement in making such a determination.

(12) The phrase "shown to be" will be treated as in (11) above.

(13) See comment (2) above.

(14) See comments (2) and (4) above.

(15) The word "overwhelmingly" has been changed to "convincingly."

(16) The word "assumption" has been changed to "assertion" in the explanation of **GUIDELINE 1**.

(17) See comment (1) above. The standard in the guidelines is the accuracy of the census enumeration, not the "traditional enumeration" itself.

(18) **GUIDELINE 1** has used language equivalent to the first sentence of this substitute guideline. The standards of accuracy proposed by in the comment are not appropriate. The first standard focuses only on the national count (see comment (3) above). The second standard focuses only on a particular sub-group of the population and the third standard focuses only on the uses of the count for apportionment. Accuracy must be assessed across the many potential uses of the census. We will rely on the professional judgement of the Census Bureau and its technical staff, rather than the routine application of arbitrary standards, such as a fixed probability.

(19) See (15) above. The original word was not intended to imply a bias against adjustment.

(20) The adjustment decision is not only technical in nature, as stated in the introduction to the **GUIDELINES**. The criteria for adjustment are embodied in the **GUIDELINES** as a whole. Historic achievement and the absence of any competitive survey efforts are not considered as such criteria.

(21) We agree. Final **GUIDELINE 1** does state that we want to be confident that an adjustment improves the accuracy of the census enumeration.

(22) We believe the final **GUIDELINES**, taken as a whole respond to this comment. The proposed language alone is insufficient. See (18) and (20) above.

(23) This is a matter of semantics. We believe the term "Census" is accurate as used in final **GUIDELINE 1**.

(24) We do not think the proposed substitute guideline adequately describes the task. Final **GUIDELINE 1** states our aim to generate the most accurate counts practicable.

(25) The suggested guideline is covered by other **GUIDELINES**. Specifically, final **GUIDELINE 1** articulates the relationship between the adjusted census enumeration and the unadjusted census enumeration and our interpretation of accuracy. Material in support of the application of this **GUIDELINE** is described in the explanation of the **GUIDELINE**.

Proposed GUIDELINE 1a

[1a] The post-enumeration survey is not to be considered as a substitute for the Census as a count of the population of the United States, any state, any locality, or any census block.

Explanation: The post-enumeration survey can provide an estimate of the total count of the population, based on techniques of survey sampling. It does not provide a substitute for that complete count. Its proper use is as an adjunct to the population count which provides an estimate of its completeness, within statistical limits of error. Thus, any adjustment of the population count, using post-enumeration-survey information, must be based on the enumeration.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) With respect to proposed guideline (1A), (1B) and (1C) census enumeration must proceed with the highest commitment to completeness. Every effort must be made to count every person. However, given different regional characteristics, various demographic categories may be undercounted or overcounted by different rates. It is possible that a national policy of adjustment developed through post-enumeration studies or demographic analysis techniques may well push the Census count of any given region further from reality than an unadjusted count. Introducing error into Census counts in this way undermines the purpose of the Census, and has insidious effect on franchise, redistricting and reapportionment.

(2) This guideline requires any adjustment of the population count using post-enumeration survey information to be based on the enumeration itself and not some other data. Specifically, any adjustment must not be based on the post-enumeration survey as a substitute for the census count of the population. The census count itself should be the standard for accuracy.

Comments received on this proposed guideline raised the following objections:

(1) The wording of 1A, 1B, and 1C is clumsy and indirect. This guideline should say that there should be an initial good faith attempt to count everyone residing in the country as of April 1, 1990. That should be stated very simply and very directly. As there is no dispute about this matter, and since these proposals are unlikely to affect final decisions one way or another, these guidelines could be dropped altogether.

(2) Guidelines (1a), (1b), and (1c) are meaningless and trivial because the PES has always been understood as a means of measuring and correcting the undercount in the census.

Analysis of Comments Received on Proposed Guideline 1a

See the summary analysis of guideline 1.

Each objection to proposed guideline 1a will now be address in turn:

(1) Proposed guidelines 1a, 1b, and 1c, have been eliminated as free standing **GUIDELINES**. Final **GUIDELINE 1** now includes the statement that the procedures they described cannot be used as substitutes for the census, but only as supplements to it.

(2) See (1) immediately above.

Proposed Guideline 1b

[1b] Demographic analysis of the population is not to be considered as a substitute for the Census as a count of the population of the United States, any state, any locality, or any census block.

Explanation: Although demographic analysis can provide an alternative estimate of national population counts, it cannot be used to provide data at the subnational levels required by the various uses to which census data are put. Demographic analysis is an estimate of the population principally based on administrative data sources. Although it could be considered a derived count of the population, it remains an alternative to the direct enumeration of the population, not a substitute for it. Thus any adjustment of the population using demographic analysis information must only be a supplement to the enumeration.

Comments received on this proposed guideline supported the guideline for the following reason:

Any required adjustment to the census count should be utilized merely as an informational supplement to the enumeration. Census guidelines should provide that a state, county, municipality or other subnational level of government should not be required to utilize any post-census adjustment in substitute for the actual enumeration. Subnational levels of government which utilize census counts should be free to continue to utilize the actual enumeration of persons rather than a demographic analysis based on administrative data sources.

Comments on this proposed guideline raised the following objection:

See (1a) Objection (2).

Analysis of Comments Received on Proposed Guideline 1b

See the summary analysis of guideline 1 and the individual comments to the objections in 1a.

Proposed Guideline 1c

[1c] Any combination of the post-enumeration survey and demographic analysis of the population is not to be considered as a substitute for the Census as a count of the population of the United States, any state, any locality, or any census block.

Explanation: This guideline affirms that any combination of the techniques referred to in the prior two guidelines remains an inadequate surrogate for the actual enumeration of the population.

Comments received on this proposed guideline supported the guideline for the following reason:

The combination of a post-census adjustment and the post-enumeration survey would be a poor substitute for the census count. Again, these demographic techniques are based on administrative data sources rather than actual census counts, making their utilization less empirically accurate than actual census counts.

Comments on this proposed guideline raised the following objections:

(1) This guideline is objectionable because it implies that the correction of the Census would be a separate function unrelated to the Census itself.

(2) See (1a), Objection (2).

Analysis of Proposed Guideline 1c

See the summary analysis for proposed guideline 1.

Each substantive objection to proposed guideline 1c will now be addressed in turn:

(1) We did not intend to imply that the correction of the census would be unrelated to the census itself. The post-enumeration survey is designed to examine and evaluate the census enumeration. Second, the post-enumeration survey is a sample of census defined blocks. Third, the correction of the census enumeration, were it to occur, would use the post-enumeration survey results to adjust the census enumeration numbers.

(2) See the discussions of objections (1) and (2) to proposed guideline 1A.

Proposed Guideline 2

[2] The size of any undercount or overcount inferred from demographic analyses of population sub-groups shall be carefully scrutinized and fully described, and the degree to which the overcount or undercount is potentially an artifact of the assumptions underlying the analysis shall be clearly presented.

Explanation: Estimates of the size of certain cohorts of the population are based on assumptions about or studies of the behavior of these population, rather than on administrative or other records. For some cohorts these assumptions alone have led to conclusions of undercounts or overcounts is several different censuses. The extent to which such conclusions result from specific assumptions must be expressly articulated. Moreover, the extent to which these assumptions are warranted, and the sensitivity of the conclusions to changes in these assumptions, must be assessed.

Evaluation of demographic analysis estimates. Demographic analysis of population estimates is susceptible to a variety of sources of error. Numerous techniques will be used to evaluate the quality of the demographic analysis estimates. Among the potential sources of error in the demographic analysis are:

Birth registration completeness.

Net immigration of undocumented aliens.
White births, 1915–1935.
Black births, 1915–1935.
Foreign-born emigrants.
Population over age 65.
Models to translate historical birth-record racial classifications into 1990 self-reported census concepts.

The final analysis will discuss how these and other components cumulate into overall levels of error.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) Any adjustment to the census must necessarily be based upon assumptions regarding the behavior of sub-populations on whose behalf an adjustment is being made. It is believed that any adjustment of a sub-population's census count is therefore accurate to the extent the underlying behavioral assumptions are identified and proven true. For these reasons, proposed guideline 2 is supported. Any party seeking to adjust the census count should identify all underlying assumptions with regard to the behavior of sub-populations and the corresponding ability and willingness to be counted in the census. The party advocating an adjustment to the census should be required to identify the degree to which the alleged overcount or undercount is based on such behavioral assumptions. Finally, the party should be required to identify the statistical potential of error of such underlying assumptions and analyze how an error in such assumptions can accumulate into an overall level of error. Under no circumstance should an adjustment be made based on voting records of a given sub-population. The degree to which a sub-population votes or fails to vote is not related to whether the sub-population participates in the census. If an individual decides not to vote, this is no ground to adjust the census.

(2) The fact that this guideline is necessary at all, clearly shows the potential for a wide variance of error in the statistical calculation due to any number of assumptions which may be used in any such analysis. It is submitted that having recognized this, the guideline should establish as a standard a level of confidence necessary for use of such a statistical analysis. The guideline should provide that if the apparent over or undercount can be established to be the result of underlying assumptions above the established degree of confidence, then the process cannot be used.

Comments received on this proposed guideline raised the following objections:

(1) The following be substituted as proposed guideline 2: "No known process could provide a precisely accurate Census; decisions to adjust or not adjust can only reduce error, not eliminate it. We can only ever reduce error in an average sense, hopefully making many errors smaller but a few larger."

(2) The Guideline is misleading because it implies a demographic analysis will be used for adjustment.

(3) This guideline places unwarranted emphasis on demographic analysis. This is not consistent with the Stipulation and Order which requires the use of the PES, and not the use of demographic analysis, in correcting the census.

(4) The following be substituted for proposed guideline 2: "All valid means shall be used to evaluate the undercount which occurs in an unadjusted census. The degree of undercount which is determined to exist will directly affect the decision to proceed with a statistical correction process. Any degree of undercount which can be positively corrected by a statistical adjustment will be undertaken."

Analysis of Comments Received on Proposed Guideline 2

The technical grounds underlying the evaluation of the census enumeration, cited in the supporting materials for final **GUIDELINE 1**, incorporate all operations implied by proposed guideline 2.

Comments in support of this proposed guideline correctly noted the critical role played by demographic analysis in conducting whether a net overcount or net undercount occurs in the census enumeration. Comments in opposition to this proposed guideline also correctly noted that error can only be reduced, not totally eliminated, from any statistical activity as large as the census enumeration. In addition these comments alleged that the guideline was misleading. These critics suggested that the guideline could be interpreted to imply that demographic analysis would be used for adjustment—a possible outcome clearly at odds with the stipulation agreement. Although we do not agree with this last assertion, nevertheless we have eliminate any misunderstanding on this point by incorporating this proposed guideline's intended role in the adjustment decision within the technical operations connected with **GUIDELINE 1**. For these reasons, this proposed guideline is dropped as a separate and free-standing criterion.

Each substantive objection to proposed guideline 2 will now be addressed in turn:

(1) Proposed guideline 2 was a statement of a specific analysis routinely carried out to assure that the substantive results of demographic analysis are not simply an artifact of the method of analysis. The explanation of these analyses are now contained in the explanation of final **GUIDELINE 1**. We prefer final **GUIDELINE 1** to the proposed alternative, because it explicitly states that an adjustment must make the census more accurate at the national, state, and local levels. This **GUIDELINE** recognizes that the post-enumeration survey and other adjustment related activities could reduce any error in the census enumeration.

(2) Demographic analysis alone will not be used for adjustment.

(3) See (2) above.

(4) We prefer the final **GUIDELINE 1** to the proposed alternative. **GUIDELINE 1** states that an adjustment may occur only if an adjusted census count is shown to be more accurate than the census enumeration. The proposed wording is unacceptable because it seems to imply that one might correct a local undercount independently of an overall census undercount correction or one might partially adjust the census. If adjustment were to be undertaken, all counts would be adjusted.

Proposed Guideline 3

[3] The sources of any undercount or overcount of population subgroups inferred from the analysis of the post-enumeration survey conducted subsequent to the 1990 census shall be carefully scrutinized and fully described, and the degree to which the overcount or undercount is potentially an artifact of the assumptions underlying the analysis or the methods inherent in the analysis shall be clearly presented.

Explanation: The capture-recapture method which lies at the heart of the Post-enumeration-survey models for estimating population coverage deficiencies is not, as used in the decennial census, completely analogous to more conventional uses of the method in estimating populations of, say, fish or land-based fauna in a natural setting. Thus, it is imperative that the influence of this methodology on the undercount or overcount estimates be clearly explained. Moreover, the post-enumeration-survey adjustment mechanism relies on numerous assumptions. The extent to which these assumptions are warranted, and the sensitivity of the conclusions to changes in these assumptions, must be assessed.

Evaluations for post-enumeration-survey estimates. Numerous techniques will be used to evaluate the quality of the post-enumeration-survey estimates. Among the possible sources of error for the dual system estimate of population size based on the post-enumeration survey and the census are:

Missing data.
Quality of the reported census day address.
Fabrication in the P sample.
Matching error.
Measurement of erroneous enumerations.
Balancing the estimates of gross overcount and gross undercount.
Correlation bias.
Variance.

An analysis of how these and other component errors combine to produce an overall level of error will be discussed. Implicit in all evaluations is that all analyses examine data for the population as a whole and within race, sex, Hispanic origin, and geographical detail.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) If an adjustment is to be made it must be consistent and complete across all jurisdictional levels. It must be totally consistent and meet the full requirements of the Constitution for an "actual enumeration."

(2) The influence of the capture-recapture method in post-enumeration survey models on the undercount or overcount estimates must be explained by any party advocating an adjustment. Any assumption upon which the post-enumeration survey is based must be identified and explained. The possibility of error of each assumption must be assessed and the effect on the accuracy of the post-enumeration survey in the case of error must be detailed. In particular, the balancing of estimates of gross overcount and gross undercount presents a grave possibility of error.

Comments received on this proposed guideline raised the following objections:

(1) The last part of the proposed guideline is subject to varied interpretations which are not clarified in the explanation. Also the word "assumptions" has an inappropriate emphasis.

(2) The following should be substituted as proposed guideline 3: "Since constitutional use, as well as almost every other use, of the Census results is based upon ratios of reported populations (e.g. the ratios of state populations determine congressional apportionment), errors by a constant percent (which leave ratios unchanged) are much more tolerable than errors of varying percentage for different geographic regions or demographic groups."

(3) Objections to explanation of the "capture-recapture method" as the heart of post-enumeration survey population coverage deficiencies were raised.

(4) This proposed guideline is not clear when it says "the sources of undercount or overcount must be fully described." If the size of the undercount or overcount of the population can be measured with sufficient accuracy, the errors should be corrected whether or not one knows their sources.

(5) If there are more than eight possible sources of error, the Department should list them.

(6) The fundamental question is not whether a correction based on the PES approaches perfection, but only whether it is more likely to improve on an uncorrected enumeration.

(7) Proposed guidelines 2 and 3 must be balanced with a guideline which sets forth the sources of error in the raw enumeration count at an equal level of detail.

(8) The proper standard for this proposed guideline is that the evidence should only have to show that statistical adjustment improves the count's traditional failure to enumerate traditionally undercounted groups.

(9) This proposed guideline is ambiguous as there can be no question that the sources of error in post-enumeration survey have already been carefully evaluated by the Census Bureau.

(10) The following new guideline should be substituted: "Both raw enumeration and the results of post-enumeration survey should be evaluated for possible sources of error, including a careful review of all the underlying assumption of all the models used. The adjustment decision should be made after a study and comparison of raw enumeration and the results of post-enumeration survey."

Analysis of Comments Received on Proposed Guideline 3

The technical analysis underlying the evaluation of the census enumeration, cited in the supporting materials for **GUIDELINE 1** incorporates all operations implied by proposed guideline 3.

Comments received in support of this proposed guideline correctly note the need for an explanation of, and documentation of, the role of errors of various kinds, and assumptions of various kinds, in connection with the post-enumeration survey—particularly as these affect the determination of net overcount and net undercount in the census enumeration. Comments objecting to this proposed guideline in two instances propose substitutes. Because we have retained the operations implied by this proposed guideline, and because we have determined that this proposed guideline relates to considerations subsumed under **GUIDELINE 1**, we see no need for a separate guideline incorporating the operations implied by this proposed guideline, and have dealt with it accordingly.

With respect to other comments objecting to the proposed guideline: We disagree that the word "assumptions" as originally used has an inappropriate emphasis. In statistical analysis of any kind one must be continually alert to the possibility that one is *creating* that which one thinks one has found by virtue of the analysis one is conducting. Thus, the role of assumptions is critical. We agree that a correction based on a post-enumeration survey need not be perfect to be desirable. We intend to examine all sources of error. We cannot anticipate all sources at this point. The proposed guideline was not meant to imply that only sources of error listed were to be considered. The point of the evaluation is to determine whether the error present is sufficient to negate any improvements in the count adjustment factors could produce.

The proposed guideline is dropped as a separate and free standing criterion, and the operations which underlay it have been incorporated in the technical grounds for **GUIDELINE 1**.

Each substantive objection to proposed guideline 3 will now be addressed in turn:

(1) The substance of the proposed guideline is now incorporated in final **GUIDELINE 1**.

(2) The accuracy of the enumeration and the proposed adjustment must consider all uses to which the census data are put. For some uses, small errors in level are important. For example, in the 1970 apportionment, the allocation of the 435th seat hinged on a difference of less than 500 people. If the census enumeration is made more accurate by adjustment, the ratios will be more accurate as well. We do not reject the notion that the accuracy of ratios is important, but as specified in final **GUIDELINE 1** we will rely on the Census Bureau to develop appropriate measures of accuracy using accepted statistical practice and to exercise the highest standards of professional judgment.

(3) The objectionable explanation has been deleted. Capture-recapture methodology is fundamental to post-

enumeration survey methods as used by the Census Bureau.

(4) Criteria for correcting for the net overcount or net undercount of the census enumeration depends, among other things on the accurancy of the census enumeration itself and on the adequacy of the proposed correction methodology. To correct errors, the behavioral source of the errors does not need to be known, but the characteristics of the people do. Errors can be corrected only if one knows the source of the error so that one can appropriately correct the count.

(5) The Department and the Census Bureau cannot anticipate all sources of error. Work continues, and will continue throughout all census-related operations, to identify and quantify sources of error.

(6) We agree. See final **GUIDELINE 1**.

(7) The incorporation of proposed guidelines 2 and 3 into **GUIDELINE 1** strikes this balance.

(8) We prefer the standard set out in final **GUIDELINE 1**. It correctly asserts that the census enumeration must be improved—not portions of it.

(9) The Census Bureau will evaluate the error structure of the post-enumeration survey that occurs after the 1990 census, as it has evaluated the error structure of post-enumeration surveys in the past. The evaluation of past surveys does not mean that one can simply apply those results to subsequent surveys.

(10) Final **GUIDELINES 1 and 3** assure that the activities suggested by the proposed substitute guideline will be carried out.

Proposed Guideline 4

(4) The 1990 Census may be adjusted only if the adjusted counts are consistent and complete across all jurisdictional levels: national, state, local, and census block. Thus, for example, counts could not be adjusted at the state level and left unadjusted at the census block level. If any census block within a stratum is adjusted, then all census blocks within that same stratum must be adjusted. Any adjusted count must be arithmetically consistent across all levels of geography and with respect to age, race, Hispanic origin, and sex. This requirement does not apply when incorporating counts of military overseas into national totals for reapportionment purposes.

Explanation: If any adjusted count is to be used, it must be adjusted at every level at which census counts are used. Some strata, for which there is no conclusive evidence of an undercount, may not be adjusted. It must be arithmetically consistent to avoid unnecessary confusion and to avoid any efforts to choose among alternative sets of numbers to suit a particular purpose. It is unacceptable to conclude, for example, that one set of numbers at the level of individual states can be used for redistricting purposes, while another set could be used for apportionment purposes.

Evaluations of small area estimation. A synthetic estimation procedure might be used for adjustment. A synthetic adjustment assumes that the probability of being missed by the census is constant for each person within an age, race, Hispanic origin, and sex category in a geographical area. A synthetic adjustment is performed in two steps. First, the preferred adjustment factors are estimated for each age, race, Hispanic origin, and sex category for a post-enumeration-survey stratum. The same age, race, Hispanic origin, and sex categories may not be appropriate for every post-enumeration-survey stratum, in which case the categories will be combined as necessary. Then the adjusted estimate in each category for the census block is obtained by multiplying the unadjusted census estimate in that category by the adjustment factor. The adjusted census estimate for the census block is computed by adding the estimated adjustments for the age, race, Hispanic origin, and sex categories. Put simply, under adjustment each individual enumerated would receive a different relative weight in the adjusted population count according to his or her race, age, sex, ethnic background, and place of residence.

The coverage error may vary substantially within the post-enumeration-survey stratum, although the strata were drawn so as to be homogeneous with respect to expected coverage error. The goal of this analysis is to determine whether or not the assumptions underlying a synthetic adjustment of the census are valid and produce counts which are more accurate at all geographic levels at which census data are used.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) This proposed guideline reflects the important principle that there must be one set of census numbers, and one alone, for all applications and uses. The principle followed in adjustment is that certain kinds of people may not be represented fairly in a Census in a predictable way, which can be arithmetically calculated and corrected. If this principle fails under examination, adjustment cannot be defended.

(2) The proponents of any adjustment, have the burden of proving the overwhelming accuracy of any statistical model and that such model will yield the most accurate counts. Statistical or mathematical model should not be based upon any post enumeration survey since such survey is not required to meet the Constitutional mandate of a "actual enumeration." The post enumeration surveys are solely for the purpose of evaluating the original enumeration and not to make any adjustments to it.

(3) This proposed guideline seems to be incomplete in the part beginning: "Evaluations of small area estimation." Something appears to be missing which perhaps would pull the proposed guideline together. When referring to "synthetic adjustment," is this a product of or based upon the post-enumeration survey? Is the Department saying that to get to block level adjustments synthetic adjustment must be made? Are synthetic adjustments based upon purely theoretical estimations which from the explanation would seem to have no particular correlation at the block level to post-enumeration survey data? This methodology appears to be designed solely as a method to justify adjustments to the block level to make the mathematics of any adjustments at higher levels appear coordinated and applied uniformly to all levels. If submitted, this proposed guideline should be changed to specify the statistically acceptable level of reliability for adjustment for census blocks.

(4) Proposed guideline 4 allows for consistent application of adjusted counts across all hierarchical levels of census geography. While adjusting all units down to block level may be technically challenging, it must be done. Otherwise the application of adjusted data may be unfair and, possibly, could marginally disenfranchise the very population subgroups whose interests are traditionally damaged by under or over count.

Comments received on this guideline raised the following objections:

(1) It is assumed that the words "same structures must be adjusted" does not require that if adjustment changes one block, it must change every block.

(2) Improvement at larger areas implies improvement at smaller areas, provided that percent corrections are carried down from larger to smaller areas.

(3) The following should be substituted for this proposed guideline: "Preserving the reputation of the Bureau of the Census for even-handed apolitical

behavior is important for the effective conduct of future Censuses. Thus it is important to avoid charges that decisions about adjustment—other than the Secretary's final decision to adjust or not to adjust—were made with a knowledge of the detailed consequences of such decisions for reported populations. To this end, the Bureau of the Census, with the concurrence of the Department of Commerce, will determine, and publish a single procedure of possible adjustment in advance of the tabulation of results of the Post-Enumeration Survey. This procedure shall be chosen to give the best adjustment that pre-Census knowledge and judgment can provide. Doing this well is almost certain to require the use of various numbers (some technically called regression constants) calculated from the results of the classical enumeration and the Post-Enumeration Survey. Procedures for the calculation of these numbers, and the exact way in which they are to be used, must, therefore, be part of the published specification of the process."

(4) While this proposed guideline is likely to have no impact upon the ultimate decision whether to certify corrected counts because of the methodology contemplated by the Bureau, it does preclude certain outcomes that might be preferable to an uncorrected census. Further, if the corrected population of a state did not equal the sum of its constituent parts, this proposed guideline would preclude using the corrected figures, even though they would yield a more accurate apportionment of Congressional seats to the state than would the uncorrected one.

(5) "Consistency" and "completeness" should be defined.

(6) This proposed guideline is objectionable because it places a requirement on the adjusted census that is not currently placed on the unadjusted data.

(7) This proposed guideline sets up a standard of consistency which is not even followed by the Census.

(8) This proposed guideline may preclude an adjustment even though corrected figures could yield a more accurate apportionment of congressional seats to each state even though such figures are not arithmetically consistent across all levels of geography.

(9) The following alternative language is suggested for proposed guideline 4: "An adjustment should take place if it would yield a corrected count which assists the census in its constitutional duty of a fair and accurate congressional reapportionment."

Analysis of Comments Received on Proposed Guidelines 4 and 7

Proposed guideline 4 and proposed guideline 7 have been combined into **GUIDELINE 2.** These guidelines reinforce the principle that there should be only one set of official census enumeration population counts, and that those counts—whether or not they are adjusted counts—must be consistent throughout the census enumeration, and must be usable for all purposes to which the census enumeration is put. The guideline notes the fact that census numbers have a multiplicity of uses. Particularly when numbers are to be adjusted, the possible existence of duplicate series raises the specter of political pressure dictating which numbers are to be used for which purposes, independent of the quality of those numbers. This guideline enables the Secretary to be assured that adjusted numbers, or unadjusted numbers, are consistent, and can be used to fulfill their Constitutional and statutory purposes. Contrary to comments received, this guideline places no requirement on potential adjusted figures that are not traditionally placed on unadjusted figures.

The point has been raised that, by including overseas Americans in the census count for reapportionment, but not for redistricting, we will have already violated this **GUIDELINE.** All tabulations of census numbers will be consistent, except for the single instance of the inclusion of military personnel in the apportionment counts. This **GUIDELINE** is not intended to apply more rigorous standards to adjusted numbers than to unadjusted numbers: It *is* intended to assure that equally rigorous standards be applied to both.

Each objection to proposed guideline 4 will now be addressed in turn:

(1) The assumption is correct. If adjustment changes one block, it is not required that adjustment must change every block.

(2) The objection is correct only if one assumes that carrying down percent corrections is an accepted practice according to statistical standards of professional behavior. As an axiom the assertion is not true.

(3) Final **GUIDELINE 3** notes, in its explanatory material, that the Census Bureau will choose a single procedure for adjustment prior to tabulation of results of the post-enumeration survey. That **GUIDELINE** also describes in detail the process of evaluating the adjustment proposal adopted in terms of alternate models. Thus, the "charges" noted in the proposed substitute guideline will, in fact, be avoided as the proposed substitute guideline suggests. Detailed technical materials, as noted in the introductory overview to these **GUIDELINES** will be available for public review. We believe the points covered in this proposed substitute guideline are dealt with as we have indicated. We will not accept the proposed substitute guideline, but we do acknowledge, and have dealt with, the principal issues it raises, in the **GUIDELINES** and supporting materials.

(4) We believe consistency is an important consideration. The lack of consistency, and the inability of the numbers to "add up" all the way from the lowest to the highest geographical levels, has the potential to create enormous practical difficulties for the uses to which census figures are put. Final **GUIDELINE 2** is intended to forestall difficulties of that kind.

(5) These are defined in the explanation. Consistency means that official numbers always yield the same total for any population, geographical, or demographically defined characteristics; completeness means the extent of census coverage for populations and sub-populations.

(6) Final **GUIDELINE 2** requirements would apply to either unadjusted or adjusted official figures.

(7) The standards of consistency implied by final **GUIDELINE 2** are followed by the census enumeration.

(8) Final **GUIDELINE 2** requires consistency across all levels of geography. It is our position that any adjusted figures must be consistent as well as more accurate.

(9) The criteria for adjustment laid out in the final **GUIDELINES** are those which would "assist the census in its [C]onstitutional duty of a fair and accurate congressional reapportionment." In particular, they require that figures produced as the official census enumeration be consistent, and usable for all legitimate purposes for which census enumeration data are required. This view is affirmed by various supporting comments, notably (1) and (4).

Proposed Guideline 5

(5) The 1990 Census may be adjusted only if statistical models of the adjustment process of comparable reliability lead to essentially similar conclusions or if a particular model is shown unequivocally to provide the best estimate. Ultimately, one statistical model must be chosen if adjustment is to be undertaken. It must be clear that this unique model yields the most accurate counts and that its selection should be based on the available information

about relative accuracy of competing methods.

Explanation: This guideline is intended to deal with the ambiguous outcomes resulting from the application of different statistical models to the Census, post-enumeration survey, and the demograpic analysis. It acknowledges that individual judgment cannot be eliminated entirely from the reasoning leading to a conclusion related to the application of an adjustment. It would suggest, for example, that if all statistical models led to consistent statistical results that are all significant in one direction, the decision on adjustment would depend on the direction and the strength of the conclusions based on those results. If any one model were to be overwhelming in its accuracy, the results from this model could be accepted. In the latter instance, this guideline would require the strongest possible factual evidence to support such a conclusion. Whatever the case, however, statistical adjustment must ultimately use only one model that is shown to yield the most accurate counts.

Comparison of evaluations of the original enumeration. The demographic analysis and the post-enumeration-survey estimates provide evaluations of the original enumeration. The census coverage error rates from the demographic analysis and the post-enumeration survey will be compared to assess the consistency of the evaluations.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) Proposed guideline 5 is supported with the exception that "substantially all" should be inserted after the word "if" in the first sentence, and "beyond a reasonable doubt" should be substituted for the word "unequivocally" in the first sentence. It is believed that the danger of ambiguous outcomes resulting from the application of statistical models to the census is so great that the standards which statistical models must satisfy should be very high. The advocates of adjustment should have to prove that their statistical models are accurate beyond a reasonable doubt in addition to proving that the census count is wrong.

(2) Census information is used for the allocation not only of political representation, but for almost every type of federal funding. Any more casual attitude toward accuracy would amount to a gift to some unforeseen favored regions at the expense of the remainder of the nation.

Comments received on this proposed guideline raised the following objections:

(1) Proposed guideline 5 is very dangerous and guarantees that no adjustment will be made; because no procedure, whether dual-system adjustment or classical enumeration, can ever be clear that it "yields the most accurate counts".

(2) The following new guideline should be substituted: "The Bureau will be prepared to assess the various components of error, both of the results of the classicial enumeration and of the results of adjusting the classical enumeration in the light of the Post-Enumeration Survey, carefully and expeditiously, and to combine these components into assessments of the total errors of both the classical enumeration and its adjustment with the aid of the Post-Enumeration Survey."

(3) This proposed guideline fails to specify what is meant by such key terms as "comparable reliability" and "essentially similar conclusions," thereby providing no grounds for the ultimate decision.

(4) This proposed guideline is objectionable because if there are two or more models for an adjustment, each of which would result in census data more accurate than the uncorrected data, but as to which there is no basis for choosing one "unequivocally" over the other, the Secretary should reject any adjustment. This shows an anti-adjustment bias.

(5) The explanation states that the adjustment decision "would depend on the direction" of the correction. The direction of an adjustment that improves accuracy should be utterly irrelevant to a legitimate decision.

(6) This proposed guideline virtually guarantees that no adjustment will be made. This proposed guideline can be read to take the position that because more than one model for an adjustment may result in more accurate Census data, each model can be rejected if it is not "unequivocally" better than the others.

(7) The following new guideline is suggested: "If any one or combination of methods can produce a more accurate count, the Department of Commerce will proceed with an adjustment."

(8) Proposed guideline 5 is an unrealistic requirement. Where there are several adjustment procedures, the Secretary should choose one if it has substantial advantages over making no adjustment.

(9) The following new guideline is suggested: "In assessing these components of error, careful even-handed attention will be paid to two sets of circumstances, sometimes call "assumptions"—both (a) those circumstances under which the classical enumeration would give better results than any other process, and (b) those circumstances under which the adjustment described in *Guideline 4* [proposed by the commentator] would give better results than any other process. Attention will also be given to the magnitude of errors associated with deviations of the actual circumstances by various amounts from such ideal circumstances, especially since it is to be expected that the actual circumstances will not coincide with either set of ideal circumstances."

Analysis of Comments Received on Proposed Guideline 5

Proposed Guideline 5 has been substantially revised, and is final **GUIDELINE 3.** This **GUIDELINE** is intended to describe the following process which will be used to judge whether adjusted or unadjusted counts are better: The post-enumeration survey will assess the coverage adequacy of the census enumeration. Evaluation of error in the post-enumeration survey will assess the adequacy of the post-enumeration survey as a basis for the weights which will adjust the census enumeration for coverage deficiencies. Different error models will be applied to the results of the post-enumeration survey to assess its accuracy, robustness, and general adequacy as an adjustment-weight generating tool.

Each substantive objection to proposed guideline 5 will now be addressed in turn:

(1) Final **GUIDELINE 3** is a modification of proposed guideline 5. It takes into account this criticism by stating that adjustment estimates need be only more accurate than the census enumeration.

(2) Final **GUIDELINES 1** and **3** provide for the Census Bureau to assess various components of error as this proposed substitute suggests, and to combine these assessments into total error estimates. The substance of the proposed substitute guideline will, therefore, be taken into account.

(3) These terms are no longer used in the description of the operations underlying final **GUIDELINE 3.**

(4) As mentioned in (1) above, proposed guideline 5 has been extensively rewritten to clarify this point, and to remove any perceived anti-adjustment bias. This criticism is no longer pertinent as the validity of a single adjustment procedure will be assessed.

(5) The wording of the final GUIDELINE has been changed to get rid of any misunderstanding. We did not intend to make the direction of adjustment a criterion.

(6) See the discussion in (4) immediately above. The word "unequivocally" has been deleted.

(7) The decision to adjust will be made applying the GUIDELINES as a group. Final GUIDELINE 1 describes the relationship among demographic analysis, the post-enumeration survey, the census enumeration, and accuracy. We prefer the current wording over that of the proposed substitute, because all factors embodied in the GUIDELINES must be considered in the decision whether to adjust the census.

(8) There is only *one* procedure for creating potential adjusted counts. The GUIDELINES are intended to enable the Secretary to determine if the census enumeration should be adjusted. There are, however, numerous tests to determine the relative accuracy of the census enumeration and the proposed adjustment.

(9) Final GUIDELINES 1, 2, and 3, together, define the role of accuracy, error, and the procedures to deal with them. These GUIDELINES perform the function of the proposed substitute guideline.

Proposed Guideline 6

[6] The 1990 Census may be adjusted only if the general rationale for the adjustment can be clearly and simply stated in a way that is understandable to the general public.

Explanation: The decennial Census is a public ceremony in which all usual residents of the United States are required to participate. If, for the first time in the history of the Census the count were statistically adjusted, and the adjustment was done in a way that is perceived to be out of the ordinary, the rationale for that action must be clearly and simply stated and understandable to the general public.

Documentation and reproducibility. The methods, assumptions, computer programs, and data used to prepare population estimates and adjustment factors will be fully documented. The documentation will be sufficiently complete for outside reviewers to reproduce the estimates. These standards apply to the post-enumeration survey estimates, the demographic analysis estimates, and the small area estimates.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) Firmly supports proposed guideline 6 which calls for a general rationale for adjustment which is understandable to the public. The decennial census is not an academic, statistical exercise, sponsored by the Federal Government, upon which statisticians may impose their own social agendas. It is the very core upon which our whole republican system of government rests. If the basic rules of the game by which we allocate political power are to be changed, it is absolutely mandatory that the reasons be understandable. If the rationale for such a change is so convoluted and technical that it cannot be generally understood, then one of the two possibilities should be suspected. First, that the issue is not basic enough to rise to a level which supports such a change or, second, that the true rationale is being clouded in a technical haze to avoid a clear statement of the real issues involved.

(2) The goal of universal enumeration requires trust and cooperation from the public. Should the adjustment not seem warranted to the public, this will result in lack of public confidence for the fairness of distribution of political representation and federal funds, and may result in an unwillingness to participate in a future Census.

(3) Understanding and acceptance of the census count is currently widespread. Persons generally believe the Department of Commerce operates the census in an unbiased and fair manner. If any post-census count adjustment technique is utilized, the danger exists that persons will lose faith in the accuracy of census results. When the public learns that their participation in the census might be undermined by an adjustment based on behavioral assumptions, participation may decline. Although any adjustment to the census is opposed, if an adjustment is required, it must be clearly understandable to the general public.

(4) It is evident by the issuance of proposed guideline 6 that the Department has realized that there are no plausible or logical answers to the most basic questions the American Public is bound to ask. Curiously, what would be the general rationale, "stated clearly and simply", for counting people we cannot see, cannot find and don't even know if they exist. Similarly, what would be the general rationale, "understandable to the general public", for disregarding ten years of planning, hundreds of millions of dollars spent obtaining the latest technologically advanced equipment and millions of man hours in the field and in its place consult a crystal ball? This proposed guideline should be formally adopted and become one of those common sense roadblocks a bad idea just can't seem to detour around.

(5) Proposed guideline 6 makes an important point. Though complex in its details, the census enumeration is straightforward and comprehensible in its basic character. Census enumeration has been carried out in recognizably similar form for 200 years. Statistical adjustment is inherently more arcane. Many Americans do fear "technocrats". They do fear tampering. This is not to cast aspersions on the Census Bureau. There is international and historical experience which makes people justly cautious. If an adjustment of the census enumeration is to be carried out, it needs to be possible to do it in a way that does not give credibility to those fears. The proposed guideline is right to acknowledge this challenge.

(6) Adjustments to the "actual enumeration" as mandated by the Constitution at the State level alone would be totally useless for reapportionment and redistricting of legislative districts and political subdivisions as may be required in the several states.

(7) This proposed guideline calls for a thorough policy debate that is understandable to the public. Any attempt to change without this debate could be viewed as an attempt by the Census Bureau to accomplish a political goal.

(8) These proposed guidelines are essential to a careful and complete consideration of whether to adjust. There has been unprecedented effort, and expense devoted to the design, planning of procedures and execution of the 1990 U.S. Census, especially for the procedures which should assure the most accurate census in the history of the U.S. Census. Even without the factor of possible artificial counts by way of statistical adjustments there can be some confusion on the part of the public. Once the census becomes subjected to statistical adjustments, there will be mounting pressures for increasingly larger sized samples. Future censuses will be compromised and the census effort will come to be seen by the public as just a big sample. Public confidence will be eroded and the public will come to believe that response to census questionnaires is unnecessary since "it will all be taken care of in the adjustment." Couldn't there then be a new "official census" each year? Could adjustments, as well, be made by statistical analysis for other than minorities, e.g. illegal aliens, nonresident military, nonresident students?

(9) Proposed guideline 6 is an important addition. Public confidence in

the census process and products is essential. By allowing for the public's understanding of the rationale for adjustment, that confidence is safeguarded. The concept of actual enumeration is simple for even the lesser-educated segments of the public to grasp. Should a statistical adjustment be desired, it must first be justified, then explained to the public. That is more challenging but necessary.

Comments received on thiis guideline raised the following objections:

(1) Objections were raised to the "general rationale" of this proposed guideline that all adjustment procedures "can be clearly and simply stated in a way that is understandable to the general public."

(2) This proposed guideline is unverifiable as we cannot test whether the "general rationale" for adjustment has been understood by the general public and it is biased against adjustment.

(3) It is not true that an adjustment of the 1990 Census would be "the first time in the history of the census" that the count was statistically adjusted. Examples of previous adjustments in 1970 are the Post Enumeration Post Office Check and the National Vacancy Check. Never before has the Bureau viewed understanding of the census operations by the Bureau or the Department as a *sine qua non* for adjustment.

(4) The proposed guideline should only say adjustment brings the data closer to the truth and should explain the adjustment as clearly as possible.

(5) This proposed guideline abrogates the right to equal representation in Congress if the Commerce Department thinks the general public will not understand.

(6) The following new guideline should be substituted: "The Census Bureau should proceed with an adjustment if it would lead to a more accurate population count. If an adjustment is used the Census Bureau should make every effort to make the public aware that similar adjustments have occurred in the past and will continue to occur in the future in an effort to ensure a fair and accurate count of each, segment of our nation's population, as required by the United States Constitution."

(7) This proposed guideline is objectionable because it requires more understandability than is required of other census procedures (e.g. imputation, etc).

(8) This proposed guideline is objectionable because it requires adjustment to be understandable to the general public. The real issue is will adjustment make a more equitable final count.

Analysis of Comments Received on Proposed Guideline 6

Proposed guideline 6 has been substantially modified and is **GUIDELINE 8.** This proposed guideline was stated in a way that led to considerable misunderstanding. Many criticisms suggested that this proposed guideline was simply an excuse to disallow adjustment on the grounds that the process was too complicated. It was also alleged to set up a standard of understandability not applied to other Department of Commerce decisions.

The intent of the original proposed guideline was to give the government the responsibility of clearly explaining the adjustment decision, whether that decision were to adjust for net overcount or net undercount in the census enumeration, or not to adjust. In addition the guideline was supposed to make the ability to articulate the decision a factor in the decision itself.

GUIDELINE 8 is intended to state those requirements clearly. Thus, when the adjustment decision is made, it must then be explained in straightforward language, as non-technically as possible. This requirement maintains the responsibility of a democracy to have its critical decisions understood by its citizens.

Each substantive objection to proposed guideline 6 will now be addressed in turn:

(1) Final **GUIDELINE 8**, which embodies proposed guideline 6, maintains that the ability to articulate the basis and implications of the adjustment decision should be a factor in the decision. The explanation of the **GUIDELINE** makes it clear that this factor alone cannot dictate the decision. This view is affirmed by many supportive comments, notably (1), (3), (4), (5), (8), and (9).

(2) See (1) above. Final **GUIDELINE 8** is not biased against adjustment. It simply attaches importance to the public's understanding of the decision to adjust or not adjust the 1990 census count.

(3) See the response to comment (10) under proposed guideline 1. In addition, understandability is not the *sine qua non* for adjustment. See (1) above.

(4) We disagree for the reasons stated in (1) above. Final **GUIDELINE 8** states what we believe is appropriate with respect to understanding the adjustment decision. Final **GUIDELINE 1** deals with accuracy.

(5) We disagree for the reasons stated in (1) above.

(6) The proposed substitute guideline is covered in our final **GUIDELINES 1 and 8.** As in the 1990 census, future census efforts will aim to produce the most accurate counts practicable.

(7) Because some other procedure is not well understood is not a reason for not clearly articulating the adjustment decision.

(8) See (4) above.

Proposed Guideline 7

[7] The 1990 Census may be adjusted only if the resulting counts are of sufficient quality and level of detail to be usable for Congressional and legislative reapportionment, redistricting, and for all other purposes and at all levels, for which the Census Bureau publishes decennial Census data.

Explanation: The guideline recognizes that the population counts must be usable for all purposes for which the Census Bureau publishes data. Thus, the level of detail must be adequate to produce counts for all such purposes. The guideline also reinforces the fact that there can be, for the population at any one point in time, only *one* set of official government population figures. The guideline does not speak in any way to the issue of the timing of the release of adjusted figures, nor is it meant to preclude any adjustment solely on the basis of timing.

Evaluations of small area estimation. See the discussion under guideline (4), above.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) Only one set of population data should be utilized by the Census Department for all purposes. The Department must not be allowed to utilize one census count of the population for one purpose and another census count for another purpose. Parties advocating an adjustment to the census count must not be allowed to pick and choose from a variety of census counts for different purposes. Proposed guideline 7 is therefore supported.

(2) The proposal relative to consistency at all levels appears to be one of the most important considerations. Due to the "extensive use" of the Census, to adjust only partially would wreak constant havoc on the choice of data, published or not, to utilize.

(3) Proposed guideline 7 properly notes that the resulting adjusted counts must be of "sufficient quality and level of detail to be usable for Congressional and legislative reapportionment,

redistricting, and for all other purposes and at all levels. * * *" The adjustment methodologies most frequently discussed will be unable to provide block and tract-level data which are sufficiently detailed for redistricting at currently mandated standards of population equality and minority voting rights protection.

Comments received on this guideline raised the following objections:

(1) This guideline is too restrictive. If improved accuracy can be achieved for any of the constitutionally mandated purposes, it must be achieved for those purposes, irrespective of what is possible for those purposes. This view is affirmed by all three supporting comments.

(2) While the Census Bureau publishes census data for a wide variety of purposes, the overriding mandate of the census is to produce the most accurate counts for congressional and legislative reapportionment. This Constitutional duty should receive priority.

(3) The following new guideline was suggested: "If an improved count can be achieved for congressional and legislative apportionment the Census count should be corrected by an adjustment irrespective of other uses of Census data."

A general analysis of comments on proposed guideline 7 can be found after the comments on proposed guideline 4.

Each substantive objection to proposed guideline 7 will now be addressed in turn:

(1) The discussion of objections to proposed guideline 4, above, details the necessity of consistency. The census, whether adjusted or unadjusted, must be usable for all statutory and Constitutional purposes. This view is affirmed by all three supporting comments.

(2) The official census counts, whether adjusted or not, must be usable for any and all purposes. See responses to the objections in proposed guideline 4. Our position is embodied in final **GUIDELINE 2.** See (1) above.

(3) The suggested change is rejected for the reasons set out in (2) above.

Proposed Guideline 8

[8] The 1990 Census may be adjusted only if the adjustment is fair and reasonable, and is not excessively disruptive to the orderly transfer of political representation.

Explanation: Any adjustment of the 1990 census should be fair and reasonable in its impact on the political process and on any allocation of economic resources that is based on the decennial population counts. This guideline is intended to ensure that the factor of disruption is explicitly taken into account as the decision whether or not to adjust the 1990 census is reached. It requires an explicit statement of the degree to which adjustment would be disruptive of the orderly transfer of political representation. It is not sufficient to simply state that disruption would or would not occur. Based on the empirical evidence and the recommended courses of action, the extent of disruption must be weighed against any benefits that might accrue from adjustment.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) Another strength of the proposed guidelines is their recognition of possible consequences flowing from a decision about adjustment. These include effects on participation in future census and possibly disruptive effects on the apportionment process. These are matters of concern to many citizens, and they deserve the attention in the proposed guidelines that they receive. Similarly, the proposed guidelines give appropriate weight to the central statistical issue, how likely it is that adjusted counts will be more accurate in relevant senses than counts from the original enumeration.

(2) Clearly, an adjustment to Census numbers must leave the data in at least as usable a form as the unadjusted condition of the data. An adjustment should not interfere with the reapportionment of the nation's Congressional seats, the redistricting of Congressional and legislative seats within states, or cause confusion as to the "real" population or demographic character is a state, county, city, census tract or other region.

(3) Due to the additional burden which might be placed on any state legislative body by virtue of any adjustment, it seems quite appropriate for the federal government to consider both the timeliness of the process and the potential disruption to the political process in more substantive terms.

(4) Political disruption is unacceptable to the public, and to elected bodies and governmental departments who must continue to deliver services under this uncertainty.

(5) Any adjustment to the 1990 census must be based upon a criteria sufficient to derogate the Constitutional mandate of a "actual enumeration". Before any adjustment can be considered there must be compelling statistical and policy reasons to do so. An "actual enumeration" of the population is not based upon some statistical formula based upon a theory that it is more probable than not that the population is a certain number at a given point in time. The decennial census must be based upon the Federal government's best effort to make an actual enumeration of the population. The "actual enumeration" must not be diluted by adjustments which have their own plus or minus error factor. Every effort must be made to make the "actual enumeration" as accurate as possible. Adjustments to the best possible count will only undermine the "actual enumeration" as mandated by the Constitution.

(6) The proposed guidelines would also favor an adjustment only if it is "not excessively disruptive to the orderly transfer of political representation." The delay of release of any counts, beyond July 15, 1991, will cause severe disruption of the redistricting process, and adjustment should not take place if it adds excessive disruption.

(7) This proposed guideline addresses the possibility that adjustment might disrupt either the redistricting or reapportionment processes. There is a need for as orderly a redistricting process as possible. If adjustment is going to add excessive disruption to an already difficult process—even to the point of delaying it beyond the 1992 election cycle—it should not take place.

(8) The extent of disruption in the transfer of political representation must be weighted against any benefit that might accrue from an adjustment of census counts. For this reason, proposed guideline 8 is supported. In Illinois, there are state constitutional deadlines for completing redistricting activities. Any delay in obtaining census count figures could severely disrupt legislative redistricting in Illinois. For example, Article IV, section 3 of the Illinois Constitution allows the Illinois Legislature to enact a redistricting plan by June 30, 1991. If no redistricting plan becomes effective by that date, then a legislative redistricting commission is constituted. In order for the Legislature to have the opportunity to enact a redistricting plan, census count data must be available several months in advance of that date. A delay in receiving such census count information until July 15, 1991 (as provided in proposed guideline 12 will make passage of a redistricting plan by June 30 impossible. The effect of this delay would therefore deprive Illinois citizens of their rights under the Illinois Constitution, a result which could hardly have been favored by the framers of our federal system of government. In addition, if a legislative redistricting commission is constituted pursuant to

the Illinois Constitution, such commission must file its own redistricting plan with the Illinois Secretary of State not later than August 10, 1991. The members of the commission would have to have the census count information immediately upon the commission being constituted on June 30, 1991 to have any chance of meeting the Constitutional August 10 deadline. If an adjustment of census count information were to delay the receipt of census count information by Illinois officials until July 15 of 1991, neither the Illinois General Assembly nor the legislative redistricting commission would be [un]able [sic] to perform their duties as specified in Article IV, section 3 of the Illinois Constitution. It is reasonable to assume that any decision to adjust census counts will result in litigation intended to overturn such decision. It is therefore reasonable to assume that adjusted figures might not be delivered by July 15, 1991 in any case. The potential disruption to the orderly transfer of political representation within the state of Illinois is highly likely if the Department decides to adjust census counts. This disruption would include elimination of the ability of the Illinois General Assembly to enact a redistricting plan, and delay of the ability of its legislative redistricting commission to perform its duties. For these reasons, proposed guideline 8 is supported.

(9) Proposed guideline 8 seems to provide the necessary flexibility, fairness, and reasonableness for the Secretary to avoid an unnecessary adjustment of the census counts. I understand that the Bureau of the Census has consistently lowered the undercount in each successive national census, and that significant improvement is again expected for the 1990 census. The margins of error are becoming so small that the justification for adjustment are becoming weaker each census.

Comments received on this guideline raised the following objections:

(1) This proposed guideline should be dropped because it makes the adjustment decision a political one.

(2) This proposed guideline should be modified to note that if the adjusted census is more accurate, using it will have a stabilizing rather than a disruptive effect.

(3) Proposed guideline 8 is inconsistent with proposed guideline 7 because it is unrealistic to assume adjustment can be made without disrupting the redistricting process in some states.

(4) This proposed guideline does not define fairness or reasonableness, and implies that there are considerations apart from accuracy.

(5) "Disruption" as used in this proposed guideline is not relevant to accuracy and should have no part in the Department's decision-making. It is not the Secretary's role to make this determination. The assignment of the Secretary is to produce the most accurate count practicable and to let political chips fall where they may. Such an action by the Secretary is *ultra vires.*

(6) This proposed guideline creates the anomalous situation that the larger the problem, the less likely it is to be corrected.

(7) The following new guideline should be substituted: "The Constitutional rights of Hispanics, minorities and undocumented to fair and equal political representation should be vindicated at any price. In order to avoid any undue disruption the Secretary of Commerce will make every effort to make an adjustment decision as early as possible."

Analysis of Comments Received on Proposed Guideline 8

Proposed guideline 8 has been substantially clarified and retained as **GUIDELINE 7.** Comments received on this proposed guideline agreed that potential disruption was an appropriate standard for the Secretary to apply when making a decision whether or not to adjust the census enumeration for a net overcount or net undercount. However, the point was raised that not adjusting in and of itself was potentially as serious a cause of disruption as adjusting, given certain circumstances. The proposed guideline and its explanation were modified to reflect this correct assertion.

Each substantive objection to proposed guideline 8 will now be addressed in turn:

(1) Final **GUIDELINE 7,** which is proposed guideline 8 as modified, does not make the adjustment decision political. It rightly requires the Secretary to weigh the consequences of his decision, whether it is to adjust or not. Specifically, he must take into account the extent to which his decision will be disruptive to the orderly transfer of political representation. This view is affirmed by supporting comments, notably (2), (3), (7) and (8).

(2) The proposed guideline has been reworded to note that disruption may result from a decision not to adjust as well as from a decision to adjust. Thus, if an adjusted census were to have a stabilizing effect, this would be a factor in the decision whether or not to adjust.

(3) See comments in (1) and (2) above.

(4) "Fairness and reasonableness" are no longer a part of final **GUIDELINE 7.**

(5) The Secretary must weigh the consequences of his action. Whether deciding to use adjusted or unadjusted census counts, the factor of potential disruption must be taken into account. The **GUIDELINE** will be weighed collectively, and final **GUIDELINE 1** and final **GUIDELINE 7** both have roles to play. See (1) above.

(6) See (1), (2) and (5) above. This final **GUIDELINE** is only one of the factors that will be considered in making the adjustment decision.

(7) The Secretary must weigh the many consequences of his decision. In addition, the Secretary will make an adjustment decision as early as practicable.

Proposed Guideline 9

[9] The 1990 Census may be adjusted even though the differential overcount or undercount compares favorably with the results of the differential overcount and undercount in the 1980 census only if there are compelling statistical and policy reasons to do so.

Explanation: This guideline requires an examination of the results of the analysis of the adequacy of the 1990 count in terms of its comparison with the 1980 count. One fact of history is that, although there was an acknowledged undercount and overcount of population subgroups and of the entire population in 1980, the quality of the estimates of those deficiencies was not adequate to allow an adjustment of those figures. Should coverage deficiencies be no greater than they were in 1980, substantial documentation of the advantages of an adjustment in increasing the utility and accuracy of the Census count would be required to warrant a decision to adjust.

Comments received on this proposed guideline supported the guideline for the following reason:

Because the figures on overcount and undercount for 1980 were not sufficient to warrant adjustment of the Census results, similar numbers from the 1990 demographic and post-enumeration surveys must be held to the same standard. The Census must proceed with a commitment to consistency, fairness and thoroughness. The alternative is a Census which is open to criticism, suspicion, and legal challenge.

Comments received on this guideline raised the following objections:

(1) This proposed guideline is objectionable because it relates adjustment to the 1980 differential

overcount or undercount in the 1980 Census.

(2) Rather than assuming the superiority of the census and demanding overwhelming evidence to the contrary, this proposed guideline should simply state that the Secretary will judge the end rate of adjusted counts against unadjusted counts and will require the use of those that he deems most accurate. Overwhelming evidence, however defined, should not be necessary.

(3) This proposed guideline is based on a misconception of the history and purpose of adjustment research and the record of differential undercount to which it is a response. The proposed guideline would promote an unconstitutional decision to reject an accurate census and accept a differentially, undercounted flawed alternative.

(4) The following new guideline is substituted: "If an adjustment can vindicate the constitutional rights of Hispanics, minorities and undocumented persons by eliminating an undercount in 1990 it should be utilized."

Analysis of Comments Received on Proposed Guideline 9

Proposed guideline 9 has been dropped. Critical comments included assertions that this proposed guideline could be perceived as being an excuse to accept an inferior count simply because it was marginally better—overall—than the 1980 census enumeration in terms of differential net overcount or net undercount.

Each substantive objection to proposed guideline 9 will now be addressed in turn:

(1) The point is well taken. The proposed guideline has been dropped.

(2) The proposed guideline has been dropped. The objection to it is now moot.

(3) The proposed guideline has been dropped. The objection to it is now moot.

(4) The purpose of considering an adjustment is to increase the accuracy of the census enumeration. That purpose is embodied in **GUIDELINE 1.** The Secretary must weigh the many consequences of his decision.

Proposed Guideline 10

[10] Any decision whether or not to adjust the 1990 census must take into account the effects such a decision might have on future census efforts.

Explanation: The decennial census is an integral part of our democratic process. Participation in the Census must not be discouraged. Respect for the objectivity, accuracy, and confidentiality of the census process must be maintained. If an adjustment were to erode public confidence in the census or call into question the necessity of the population participating in future censuses, then that would weigh against adjustment. The extent to which adjustment or non-adjustment would be perceived as a politically motivated act, and thus would undermine the integrity of the census, should also be weighed in making any adjustment decision.

Comments received on this proposed guideline supported the guideline for the following reasons:

(1) The 1980 Census resulted in an enumeration of over 98% of the population. This result depended, to an overwhelming extent, upon the voluntary participation of most American households. In 1990, the proponents of adjustment seek to take the results of this enumeration and manipulate the results of substitute aggregate totals of their liking at the possible expense of accuracy at the local level. This involves the wholesale addition of synthetic persons and the deletion of actual individuals. It also involves adjustments to tallies, even at the municipal level, which even the proponents of adjustment know may not represent a higher degree of accuracy than the actual enumeration. You must fully examine the possibility that, by adjustment, you might be sacrificing a greater accuracy in one aspect of the tallies, for an unknown possible improvement in the level of accuracy in another. It is fully possible that a proadjustment decision might be more a result of pressure for a well-meaning political adjustment, than an unbiased search for increased accuracy. If the American public loses confidence in the integrity and motivations of those who are adding up the 1990 Census numbers, they might be less inclined to participate in the 1990 Census and future censuses. We should consider carefully before involving the Census Bureau in such a policy decision.

(2) If an adjustment is approved for 1990, the potential impact for future census activities is overwhelming. There is no question that public confidence would be severely shaken, if the accuracy of the census is undermined by some artificial adjustment. Millions of dollars are expended under the present system with the current level of confidence. Certainly efforts would be negatively impacted by a mathematical adjustment.

(3) Due to the wide acceptance of the Census by government and citizens alike, it seems highly appropriate to consider the potential negative short and long term impact of any adjustment to the integrity of the Census and all of its ongoing Census programs, e.g., Current Population Studies.

(4) The decennial census neither evokes suspicion or threatens anyone. The public perception of the Bureau of the Census is universally positive. The Census Bureau has earned this good will because of its evenhanded and purely objective approach to the charge of enumerating all Americans. Over 200 years, the U.S. Census Bureau built a reputation for accuracy that is the envy of the rest of the world. Obviously, the Bureau must move very cautiously when considering any action which might undermine that reputation. Any after-the-fact statistical adjustment to the completed 1990 census has the real possibility of being perceived by the American Public as political tampering to the advantage of some and the disadvantage of others—a suspicion which could, in turn, have a chilling effect on future public participation and confidence.

(5) Adjustment of census counts may have negative effects on the willingness of the public to participate fully in the 1990 census as well as future decennial census efforts. It is believed that if the integrity of the census is diminished in the eyes of the public, the accuracy of census counts will be diminished. Advocates of an adjustment to the census count must prove that an adjustment to the census will not undermine the accuracy of future census counts.

Comments received on this guideline raised the following objection:

This proposed guideline is based on mere surmise. It would encourage a decision against correction based on speculation alone. There is no evidence that suggests a decision to adjust will have any effect of future census participation. The United Kingdom and Australia have already corrected their censuses and there is no evidence that their countries have been harmed by correction.

Analysis of Comments Received on Proposed Guideline 10.

Proposed Guideline 10 has been retained as **GUIDELINE 4.** The explanation of the logic underlying the proposed guideline has been modified to note explicitly that the effect of not adjusting as well as the effect of adjusting the census enumeration for a net overcount or net undercount plays a role in considerations of the effect of current census activities on future censuses. Comments on this proposed

guideline were most supportive of its use as a criterion for the Secretary's consideration.

The substantive objection to proposed guideline 10 will now be addressed:

(1) The proposed guideline, which is now final **GUIDELINE 4**, does not encourage a decision against adjustment. It simply does not want to discourage people from cooperating with the census. The adjustment decision must take into account potential adverse effects on future censuses. It may be the case that not adjusting the census, in the context of all the **GUIDELINES**, will have an adverse effect, or *vice versa*. This **GUIDELINE** requires that these potential effects receive explicit consideration as factors in the adjustment decision. This view is affirmed by all five of the supporting comments.

Proposed Guideline 11

[11] Any adjustment of the 1990 Census may not violate the United States Constitution or Federal statutes.

This guideline requires no explanation.

Comments received on this proposed guideline supported the guideline for the following reason:

There is a good question, under the United States Constitution, whether or not an adjusted enumeration is even legal. This would certainly be an issue for the courts.

Comments received on this guideline raised the following objection:

The Department has never asserted that adjustment is illegal. This proposed guideline should state the Department's concerns about illegality if it has any.

Analysis of the Comments Received on Proposed Guideline 11

This proposed guideline—which is now final **GUIDELINE 5**—simply states that the Secretary may not violate the law in order to adjust the census enumeration. In response to this comment, the modified explanation makes specific the meaning of this guideline.

Proposed Guideline 12

[12] There will be a determination whether or not to adjust the 1990 census only when sufficient data are available and analysis of the data is complete enough to make such a determination. If sufficient data and analysis of the data are not available in time to publish adjusted counts by July 15, 1991, a determination will be made not to adjust.

Explanation: It is inappropriate to decide to adjust without sufficient data and analysis. The Bureau will make every effort to ensure such data are available and analysis is complete in time for the Secretary to decide and publish adjusted data by July 15, 1991. If, however, sufficient data and analysis of the data are not available in time, a determination will be made not to adjust.

Comments received on this guideline raised the following objections:

(1) This proposed guideline should allow adjustment after July 15 if statistical data indicate need for adjustment.

(2) The date of July 15, 1991 does not create a date by which the Department is "liberated" from its obligations to report the most accurate count practicable. This proposed guideline is an invitation to foot-dragging.

(3) The language "only when sufficient data are available and analysis of the data is complete enough to make such a determination", would strike some people as giving too much leeway to potentially partisan decisionmakers.

(4) Rather than requiring decisionmakers to exercise scientific judgment about what is sufficient and what is not sufficient, it would be better to have officials make a decision based on what analyses they have.

(5) The following new guideline should be substituted: "There will be a determination whether to adjust the 1990 census by July 15, 1991. If adjusted counts are not available at that time, a determination will be made not to adjust."

Analysis of Comments Received on Proposed Guideline 12

Proposed Guideline 12 has been retained as **GUIDELINE 6**. The relationship between this proposed guideline and the stipulation agreement requiring that these guidelines be produced has been elaborated in the discussion of **GUIDELINE 6**. The July 15, 1991, date is court imposed. We reject the allegation that this proposed guideline is an invitation to foot-dragging, gives to potentially partisan decisionmakers too much leeway, or should be replaced by a weaker guideline allowing a decision on adjustment to made based on whatever data are available on July 15, 1991. The explanation of **GUIDELINE 6**, and the text of the stipulation agreement, provide the legal grounds for this date, and the professional basis for the likelihood of its being successfully met.

Each substantive objection to proposed guideline 12 will now be addressed in turn:

(1) This is outside the scope of the stipulation.

(2) Final **GUIDELINE 6**, which incorporates proposed guideline 12, does not invite footdragging. The date was agreed to by plaintiffs in the lawsuit which stipulated these **GUIDELINES** as a mechanism to resolve the adjustment controversy. The Department intends to conduct as full, fair, and accurate a census as possible and to make the adjustment decision at the earliest practicable date.

(3) The **GUIDELINE** is intended to mean that the Secretary have sufficient information to make a responsible decision. The issue is not partisan. It is a matter of accurate data.

(4) Sufficient data are necessary to make an informed decision. If available analyses were *de minimis*, the information would very likely be insufficient for a responsible decision. The Secretary must be assured that, should he decide to adjust the census enumeration, the counts would hold up under professional, technical, and legal scrutiny.

(5) The proposed wording does not fully meet the requirements of the stipulation, and, therefore, must be rejected.

General Substantive Comments

General comments received in favor of the proposed guidelines

(1) The dual use of the Post Enumeration Survey (PES), both as an evaluation technique and a means of correction of deficiencies, is a significant new step in the census process. In the past we have always depended upon the initial enumeration and its follow-up enhancements as the basis for development of the "official" figures. Departure from this policy is not to be taken lightly—as the language in the Constitution specifically calls for an "enumeration." Since the only constitutional reason for the development of census tallies is to apportion representation, and representation is gained through real votes, coming from districts with real populations, the proposed use of statistically adjusted populations in redistricting boils down to statistically weighing votes. It is precisely because of this implication that any decision to adjust must be lifted above the level of a statistical debate and become a major public policy concern. Taking all these considerations into mind, the guidelines developed out of the advisory process address both the technical and public policy issues involved in making an adjustment decision. The proposed guidelines which address the areas of general public understanding and

assured accuracy are especially important. If we end up adjusting the enumeration results, it should be done on the basis of overwhelmingly convincing evidence that such changes represent a movement toward "reality" at all levels of geography used for redistricting. Since this change in public policy will also involve a change in voting, the change, and the general reasons behind it should be understandable to the voters.

(2) The tools we use to estimate the quantity of overcount and undercount will be subject to bias, which will be difficult to measure given the necessarily imprecise character of these methods. Full description and study is essential to judge the applicability and reliability of the resulting numbers.

(3) On balance, the proposed guidelines are sufficient to appropriately frame the discussion which will be before the Secretary shortly. They indicate an awareness of the many issues and problems confronting the decision maker and objectively address the scope of inquiry and the heavy burden of proof before any adjustment can be considered.

(4) The use of accurate data as the basis for allocating legislative representation in this country cannot be understated. For over 200 years, our government has relied on enumeration, and kept with the spirit of the U.S. Supreme Court one person, one vote decisions during the 1960's. The proponents of adjustment would have us manipulate enumeration totals from a statewide level to a block level. We must not change the procedures of the census unless there is clear evidence that the adjustment would improve the accuracy of the census.

(5) These proposed guidelines are obviously the result of careful consideration of all aspects of the adjustment process. They cover both the basic technical and policy issues involving census adjustment. The Secretary's careful consideration of all these issues, when he makes his adjustment decision in 1991, will result in not only a fair decision, but a decision which will protect the integrity of the Census process in all its aspects. It will also achieve a result which will have the support of the people who have placed their public trust in us to administer their democratic system.

(6) The question as to whether there will be any adjustment of the 1990 U.S. Census is indeed very important, a question which easily conjures up concerns about the role of statisticians in our democratic society. Perhaps not so obviously, however, it provokes policy discussions about the role of our federal government and its three branches. The proposed guidelines are an excellent effort at addressing many of these, and other aspects of the very difficult problem presented by the question of whether any adjustment could be, and should be, made to the federal Census.

(7) The proposed guidelines address many of the relevant inquiries which must be a part of the overall decision process before the Secretary as a result of the New York litigation.

(8) It is a given fact that political suspicions will pervade any attempt to make adjustments to a census. Kansas has experience in this area. The Kansas Constitution calls for state legislative redistricting to be based upon the latest federal decennial census adjusted by removing nonresident military and nonresident college and university students from the census counts and allocating the resident military and student counts to the place of their Kansas residence. The adjustment responsibility has been assigned to the Secretary of State. Political suspicions, cutting across political party lines, were prominent in the legislative discussions on the proposed constitutional provision. They continued on into the discussions the following year regarding the adjustment enabling legislation. These suspicions and arguments continue today as the constitution and the enabling legislation are implemented. Because of these political suspicions, the task of the Secretary of State has been made more difficult. Much time and precious resources have to be devoted to countering and disabling these suspicions. If adjustment of the U.S. Census becomes the norm, the Bureau of the Census will become more and more preoccupied with combating political suspicions with the consequent diversion of resources from the census effort itself.

By definition, the issue of adjustment of the census is entirely political. It is really a battle over raw political power. Once adjustments commence, the battle will surely become then one of how to dictate the methodology of the adjustments to grab even more political power and fiscal advantage.

Perhaps of equal importance is the very real potential for the census to become in the eyes of the public just another part of unfair and unresponsive government that doesn't recognize individuals, but simply processes faceless numbers. Being viewed with political cynicism is not a burden that the census needs while it struggles to insure maximum participation.

(9) The proposed guidelines are correct in recognizing that adjustments to the census can be excessively disruptive to the democratic process. It is terribly unfair to the voters for elections to be delayed, campaigns shortened and redistricting done twice, because of debates and litigation over census adjustment. Even if elections are not delayed, the confusion generated by census adjustment makes it impossible to provide voters with the accurate election information.

(10) These are a reasonable and prudent set of proposed guidelines for deciding whether or not to adjust 1990 census results for undercount.

(11) As is appropriate, the proposed guidelines focus first on whether or not a statistical adjustment is justified and should be authorized. The constitutionality of the basic issue has not been firmly established, nor have all the likely significant effects of statistical adjustment been determined. The initial presumption of the guidelines should not be that an adjustment is automatically justified and the only concern is "how" the adjustment will be manipulated.

(12) The census is widely regarded among our citizenry as the most accurate and rational basis for determining the population of the United States. Virtually every aspect of our society is impacted by census data. Any statistical alterations to the enumeration would be based on a premise which serves to favor or disfavor a particular category of persons. The census should not be used as a tool to support and perpetuate such biases. The most fundamentally sound census is one which is based on evidence that a physical person is in a particular location at a particular time. The Secretary is correct in pursuing the matter of adjustment from a viewpoint which protects the status quo. No statistical adjustment should be made unless it can be documented to be a more accurate count and overwhelmingly shown to produce a more objective process. The burden has been aptly placed on the plaintiffs to substitute reasons why a policy shift as major as a statistical adjustment to the census should occur.

(13) The twelve proposed guidelines appropriately focus first on the question, "should an adjustment be done?" rather than "Which methodology is most useful?" The proposed guidelines are flexible enough to avoid forcing the Secretary of Commerce into any particular decision, yet are sufficiently well-defined to address a significant over or undercount.

The United States Constitution calls for an actual enumeration which, until recently, had always been interpreted as

an actual, physical count. The nation's founders did not want to leave to vital a process at the mercy of statistical manipulation by the politically self-interested. Very few institutions of our government have remained inviolate; among these are the decennial census process. The continuing legitimacy of our Constitutional republic is based on the fair reapportionment and redistricting which follows the decennial census.

In addition, adjusted data may have practical technical limitations. These limitations are recognized in proposed guideline 4 which requires adjusted counts to be consistently and completely applied across all jurisdictional levels.

(14) For its first 200 years of its existence, this government has used the decennial enumeration as a basis for the allocation of legislative representation. This has been especially true since the U.S. Supreme Court issued its series of one person, one vote decisions in the 1960's. In the congressional redistricting process, that same Court has emphasized the need for accurate data in mandating that congressional districts be as nearly equal in population as practicable. In drafting district lines, the use of accurate data down to the smallest possible geographic levels has become mandatory. Many districts are deemed acceptable or unacceptable based on the placement of one city block. It is only by use of block-level data that plan drafters are able to meet the Court's stringent standards.

(15) These proposed guidelines appear to force careful consideration of public policy as well as technical aspects of an adjustment. Given the importance and gravity of a decision that could be construed as "tinkering" with the decennial population count. The decision regarding adjustment fully warrants the detailed evaluation and procedures specified in the proposed guidelines.

Before any adjustment is considered, it is important to determine that the methods used to assess the accuracy of the count are consistent and unbiased and that any changes in the original data will lead to improved accuracy at both the aggregate as well as local and sub-local units. The proposed guidelines require this. The decision whether or not to adjust census enumeration results in not just an academic exercise of scholarly interest; it is a public policy concern. Any change from the two century old system of allocation of seats and political power should be understandable to the public and the benefits of such adjustments must be significant, real and fair to all segments of the population. Any perception that the government is "cooking" the Census figures must be avoided. The proposed guidelines would accomplish this goal.

(16) Any scientific method of statistical adjustment of data requires assumptions. It is not clear how anyone can verify these assumptions in all cases. So it seems to be unreasonable to burden the Bureau to be responsible for the assumptions on which the assumptions depend.

(17) Public confidence and cooperation in the census process would certainly be undermined if the Department undertakes to add nonexistent persons to census blocks or removes people who are actually there. Such a shift in public policy needs careful scrutiny and coordination. Implementation of the proposed guidelines will act as a valuable tool in the decision making on this very important issue.

(18) Since the census now counts every block in the United States, the census count itself is the standard for accuracy. Prior to any adjustment, it should be proven that the census is wrong, and the adjustment is more accurate in real terms.

(19) The proposal emphasizes that there is no reason to adjust the census unless the adjusted count is shown to improve the uses of which the census is put. Before ordering adjustment, the Secretary should have to justify the advantages of adding persons who do not exist to census blocks, removing persons who were actually counted from the count, and giving each person counted "a different relative weight in the adjusted population count according to his or her race, age, sex, ethnic background and place of residence."

(20) The proposed guidelines properly shift the underlying question on adjustment from a purely technical "can it be done?" to a policy-oriented "should it be done?" This is the correct focus for an inquiry that has vast public policy ramifications; more than a statistician's belief should control this decision.

(21) The procedures of the census should not be changed unless there is evidence that adjustment would very clearly improve the accuracy and fairness of the census.

(22) It would seem most irresponsible to allow any adjustment of the census until there is universal agreement that undercounting exists and that the Department has identified the one best method of addressing the "problem."

(23) There is no consensus among the experts, including statisticians, that the proposed capture-recapture technique will yield a more accurate national count. The data could actually introduce more errors into the census. The proposed statistical adjustment technique does not recognize vast differences from district to district across the country. The manipulated numbers assigned to each district would certainly be based on conflicting statistical estimates. Indeed, in the 1980 post-enumeration survey, all twelve statistical models produced different results.

(24) There is no question that the actual enumeration is the foundation of the census. Every process which adds to that count should be carefully examined both in terms of its technical and public policy implications. Just because such processes have not been subject to public scrutiny in the past, does not justify the position that new proposals should be exempt. it also follows that the more radical the change, the more important public scrutiny becomes.

(25) The Commerce Department has struck a delicate and proper balance between the needs of the Department and the Country for a timely, accurate census, and the views of those who claim undercounting of some portions of Society.

General comments received critical of the proposed guidelines

(1) The stipulation and order requires that technical guidelines be published.

(2) Proposed guidelines 5, 7, 8 and 12 all present nearly impossible and clearly unreasonable conditions for adjustment.

(3) Proposed guidelines 1, 4, 6, and 7 should include technical or statistical standards.

(4) Substantial changes must be made before final guidelines are issued to ensure that the spirit and intent of the Stipulation and Order are upheld. The final guidelines should (1) replace the current bias against statistical adjustment with a framework for a more objective, reasoned evaluation of adjustment procedures; (2) eliminate those proposed guidelines that do not bear on the fundamental issue of census accuracy; and (3) set forth quantifiable, objective criteria as required by the Stipulation and Order.

(5) The proposed guidelines are fundamentally biased against adjusting the census and the Secretary should base his decision on the weight of the evidence regarding the accuracy of adjusted versus unadjusted counts.

(6) Proposed guidelines 6 and 12 should be directives from the Secretary to the Census Bureau rather than proposed guidelines.

(7) The overwhelming key issue must be the accuracy of 1990 census data. The proposed guidelines must recognize that there will be three fundamental sources

of information regarding the number of Americans:

(a) The Original census enumeration,
(b) The post-enumeration survey enumeration,
(c) the demographic analysis program.

The main issue must be to provide a sound, well-reasoned, balanced evaluation of the original enumeration, the post-enumeration survey enumeration, and the demographic analysis program. It is improper and in violation of the Stipulation and Order to ascribe an overwhelming burden of proof to any one of the three sources, as is done in the proposal.

(8) It is strongly suggested the technical guidelines be given a preeminent position in the final guidelines document. The technical guidelines provide the foundation or the underpinning for evaluating the three sources of information. For communication with the general public, you may wish to shorten the technical guidelines somewhat. On the other hand it is also suggested the Department and the Census Bureau become very specific about what evaluations will be done and when they will be done. Because such specific information would tend to lengthen the guidelines document, some of the information could be placed in an appendix. However, it is strongly urged this material be fixed by March 10, 1990.

(9) The proposal fails to acknowledge the more than forty-year history of this problem, especially the Census Bureau's progress this decade. Through this proposal, Commerce seems to be saying that it has no idea whether the post-enumeration survey methodology and demographic analysis methodology will work or not, and that its information is so incomplete that it cannot make a judgment about this matter. This also violates the Stipulation which states "* * * the parties hereto at this time believe that the Census, including a post-enumeration survey and other adjustment-related operations, can and will be conducted in a manner that will result in the most accurate counts practicable * * *" The Bureau's own research and testing has demonstrated the strong likelihood that a post-enumeration-survey based correction can move the enumeration closer to the truth both in level and in distribution. Thus, the Department must plan on that eventuality and the final guidelines document must acknowledge the likelihood of that eventuality, while leaving room for a no-adjustment decision should the post enumeration survey enumeration, demographic analysis or census enumeration fail substantially in ways or to an extent not foreseen in the pre-census tests.

(10) The proposed guidelines reflect a long-standing semantic problem that should be dealt with decisively once and for all. It is inappropriate to speak of "the Census" versus "the adjustment." This sets up some kind of artifical distinction between the two, leading to conflicts. The words create an impression that adjustment is something alien to the census, something sinister and untrustworthy that is added on later. The proposed guidelines should reflect, as does the Stipulation, that the post-enumeration survey is part of the census and that it provides evidence that should be used, as other evidence is used, to generate the most accurate counts.

(11) The various evaluations of the original enumeration, the post-enumeration survey, and demographic analysis should emphasize accuracy both in distribution and in level, with priority given to the former.

(12) The evaluation of the original enumeration and post-enumeration survey will be conducted at aggregate levels of geography, for broad demographic categories, or for some combination of both. The aggregate categories are called evaluation strata. There will be no explicit evaluation at microlevels, e.g., the block, as the proposal improperly suggests. Other results which are already available and of which Census Bureau scientists are aware, demonstrate that if aggregate data is accurate, then so will be the corresponding disaggregated data, not necessarily for each and every block in the country, but broadly on balance (or average). Further, the average improvement will be such that there will be no information in Census Bureau data banks that would permit identification of specific blocks or areas of residual differential undercount or overcount.

(13) The final guidelines should describe a search for improvement, not a search for perfection. Placing an overwhelming burden of proof on the post-enumeration survey, as does the proposal, may lead to a most regrettable situation wherein the search for perfection prevents statistically and substantively meaningful improvements on the original enumeration. The spirit of searching for improvement also has implications for the timing of an adjustment. Today, the Census Bureau seems intent on planning a flawless post-enumeration survey, or as close to flawless as resources and the July 15 date will permit, and an extensive, though as yet not completely specified, post-enumeration survey evaluation. This planning may or may not be appropriate, given demands for early census data. There should be a careful, well-reasoned approach to further planning and to execution of the post-enumeration survey with a spirit of achieving 90% (approximately) of the maximum possible improvements in accuracy at the earliest possible date before July 15.

(14) It is suggested that the policy guidelines be dropped or, at the very least, ascribe some order of determination to the various final guidelines, with census quality as the number one determinative factor.

(15) The Secretary should delegate the final decision-making authority about adjustment or correction to the Director of the Census Bureau, as was done in 1980.

(16) The technical guidelines are the key to ensuring objectivity and the lack of technical guidelines contributes to the appearance that objectivity is lacking. Work should have continued on the technical guidelines developed by the Bureau in 1987. The proposed guidelines amount to 12 ways to say no to adjustment, a conclusion shared by experts who have no connection to plaintiffs in the suit noted in the Summary. The proposed guidelines include too many policy grounds that go against adjustment. If an adjustment improves the counts, it should be undertaken. The proposed guidelines should not require an "overwhelming" burden of proof before an adjustment can be undertaken. Requiring that level of proof is evidence of hostility to adjustment. Also, the assumption that the basic enumeration is the best possible count is flawed.

Analysis of General Comments

These comments are diverse in nature. Each will be addressed in turn.

(1) The stipulation and order require that guidelines be developed and adopted. These guidelines are to "articulate what the defendants believe are the relevant technical and nontechnical statistical and policy grounds" for the adjustment decision. The technical grounds are contained in this document.

(2) Final **GUIDELINES 2, 3, 6, and 7**—which correspond roughly to proposed guidelines 5, 7, 8, and 12—do not present impossible and clearly unreasonable conditions for adjustment. The responses to specific objections to those proposed guidelines make that clear. Furthermore, the **GUIDELINES** are to be weighed collectively. See Supportive comments (2), (3), (5), (8), (11), (13), (14), (18), and (21).

(3) See (1) above.

(4) The **GUIDELINES** are not biased against adjustment. Proposed guidelines not bearing on the fundamental issue of adjustment have been eliminated. The stipulation does *not* require quantifiable, objective criteria—it requires guidelines. See (1) above. It is our view that the changes we have made follow the spirit and intent of the Stipulation and Order.

(5) The Secretary will utilize the **GUIDELINES**, which give a prominent role to the issue of accuracy, in his decision. The **GUIDELINES** will help ensure that there is an objective, balanced approach for the adjustment decision. See (2) and (4) above.

(6) We believe these are more appropriate as **GUIDELINES** than as directives. The Secretary will issue appropriate directives to the Census Bureau, as these are called for, throughout the census process.

(7) The final **GUIDELINES** provide a sound, well-reasoned, and balanced evaluation of the enumeration, post-enumeration survey, and demographic analysis. However, for reasons stated in the introduction, the census enumeration must necessarily be considered more accurate unless shown otherwise. See, especially **GUIDELINES 1 and 3.**

(8) The Department will publish more detailed technical materials in the near future, as noted in the introduction. These cannot all be fixed prior to March 10th, since some are necessarily dependent on the census and the post-enumeration survey process.

(9) The Department is well aware of the 200 year history of the census, as well as the 200 year history of the coverage deficiency problem. The Department is committed to conducting all necessary operations in a manner that will result in the most accurate counts parcticable. **GUIDELINES 1 and 3** state the relationship among the census enumeration, the post-enumeration survey, and demographic analysis and their evaluation. The Department is open to the potential of adjusting the counts, while leaving room for a non-adjustment decision as well.

(10) The post-enumeration survey is separate from the census enumeration. The objection seems to seek to institute a so-called integrated census. The Department rejects that option as a way of carrying out census operations as explained in the introduction and in responses to comments on proposed guideline 1. Adjustment is not viewed as alien or sinister. The post-enumeration survey and demographic analysis should and will be used to evaluate the enumeration and to generate more accurate counts, if possible.

(11) See **GUIDELINE 1.** Accuracy is a paramount concern to the Secretary, but he is also concerned with issues reflected in the other **GUIDELINES.**

(12) To be acceptable the evidence for adjustment must show convincingly that the count can be improved at the national, state and local level. The variation in block-to-block counts will be one determinant of the measures of accuracy. See (2) above.

(13) The **GUIDELINES** focus on accuracy and reliabilty and improvement, not perfection. The Secretary will make his decision at the earliest practicable date.

(14) In accordance with the stipulation, the **GUIDELINES** articulate the relevant technical and non-technical statistical and policy grounds for the decision. The **GUIDELINES** will be weighed collectively.

(15) The responsibility, under the law, for the conduct of the decennial census of population and housing, belongs to the Secretary of Commerce. He will exercise that responsibility as he deems most appropriate.

(16) The Stipulation obliges the Department of Commerce to develop guidelines that "articulat[e] what defendants believe are the relevant technical and nontechnical statistical and policy grounds for decision on whether to adjust the 1990 Decennial Census population counts." The **GUIDELINES** satisfy this requirement. For example, **GUIDELINE 1** includes a section entitled "Discussion of Technical Grounds," which explains technical statistical grounds that are relevant to the adjustment decision. Likewise, technical grounds relevant to the adjustment decision are clearly articulated in the section entitled "Evaluations of small area estimation" which follows **GUIDELINE 2.** As stated in the Introduction, a detailed outline of technical operations and procedures will be published. The final **GUIDELINES** are not twelve ways of saying no. The proposed guidelines have been extensively modified to take into account the concerns of commenters that the proposals were not balanced enough. In accordance with the Stipulation, the **GUIDELINES** reflect the policy grounds which the Department of Commerce considers essential to the adjustment decision. One of the proposed guidelines that contained policy grounds has been eliminated, and the language of the remaining ones has been modified to eliminate concerns that they counseled against an adjustment. We have explained why we view enumeration as the basis for the census counts, and require that statistical techniques used to modify the counts in an attempt to improve them be subject to close scrutiny. (See the Introduction.) We have eliminated the requirement that an adjustment yield counts which are proven to be "overwhelmingly" better than unadjusted population counts. Instead, adjusted counts need only be shown to be "convincingly" better. (See the explanation of **GUIDELINE 1.**)

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federal register

Thursday
March 15, 1990

Part IV

The President

Proclamation 6108—Deaf Awareness Week, 1990

Digitized

Federal Register
Vol. 55, No. 51
Thursday, March 15, 1990

Presidential Documents

Title 3—

The President

Proclamation 6108 of March 13, 1990

Deaf Awareness Week, 1990

By the President of the United States of America

A Proclamation

We Americans have always taken pride in being an independent and self-reliant people. These qualities are especially important to persons with disabilities, and the deaf and hard-of-hearing are no exception.

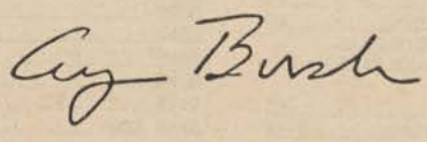
Over the years, advances in technology have helped to eliminate many of the physical barriers that once prevented disabled individuals from participating fully in the social and economic life of their communities. Today, deaf and hearing impaired men and women around the country are destroying many of the attitudinal barriers that have likewise limited their opportunities for educational and economic advancement. More and more of these Americans, and persons with other disabilities, are assuming positions of leadership and responsibility throughout the United States. Their achievements provide a compelling reminder that every member of our society is a person of immeasurable worth and potential.

The students, faculty, and administrators of Gallaudet University, a private, nonprofit liberal arts institution in our Nation's Capital, have played a prominent role in promoting public awareness of the rights, needs, and abilities of the deaf and hearing impaired. By providing valuable educational opportunities for persons with disabilities, and by helping to destroy myths and misconceptions about deafness, Gallaudet and other schools for the deaf and hard-of-hearing are making a significant contribution to our Nation's efforts to ensure that these individuals enjoy full participation in the mainstream of American life.

In recognition of the rights and accomplishments of deaf and hearing impaired Americans, the Congress, by Senate Joint Resolution 227, has designated the week of March 11 through March 17, 1990, as "Deaf Awareness Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of March 11 through March 17, 1990, as Deaf Awareness Week and invite all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of March, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



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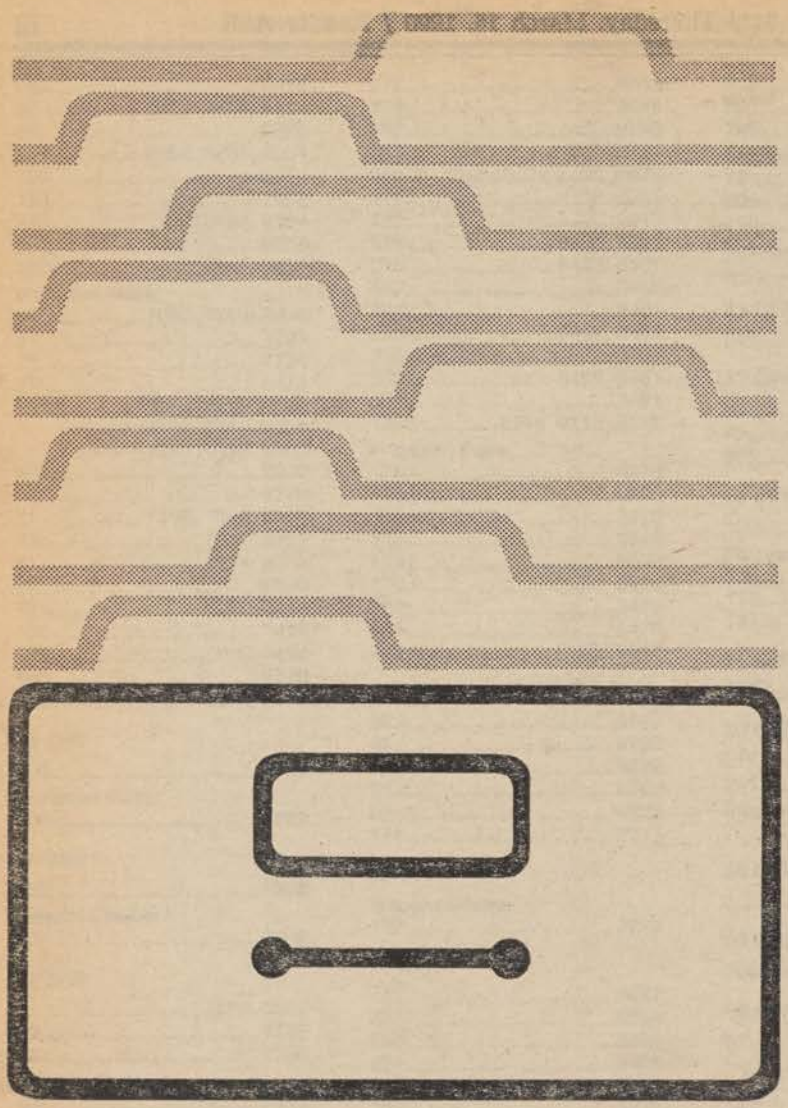

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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